Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

Final Agenda
City of Fayetteville Arkansas
City Council Meeting
July 7, 2009

A meeting of the Fayetteville City Council will be held on July 7, 2009 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions

Presentations, Reports and Discussion Items:

A. Consent:

1. Approval of the June 9, 2009 Special City Council meeting minutes. **APPROVED.**

2. **U.S. Marshal's Service:** A resolution to approve a budget adjustment to recognize $25,000.00 in revenue from the U.S. Marshal's Service for police overtime costs.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 143-09

3. **State and Tribal Assistance Grant (STAG):** A resolution authorizing the Mayor to apply for a State and Tribal Assistance Grant (STAG) in the amount of $286,400.00 from the U. S. Environmental Protection Agency for sanitary sewer system improvements; and designating the Mayor as the City of Fayetteville's authorized representative in all matters relating to the procurement and administration of said grant.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 144-09

4. **Drake Field Insurance Reimbursement:** A resolution approving a budget adjustment recognizing the receipt of insurance reimbursement and establishing a project budget to track expenses related to the demolition, cleanup and contingency replacement of the hangar building at Drake Field that was destroyed by fire.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 145-09

5. **Ice Storm 2009 Disaster:** A resolution approving budget adjustments totaling $377,291.00 to restore various operating budgets to funds and departments for cash expenses incurred in response to Ice Storm 2009 Disaster.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 146-09

6. **Garver Engineers, LLC Amendment No. 4:** A resolution approving Amendment No. 4 to the contract with Garver Engineers, LLC to reduce the fee for construction phase services by $109,964.00 for Mount Comfort Road Improvements Contract 2, from Alpine Avenue to Rupple Road.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 147-09

7. **Arkansas Natural Resources Commission Grant:** A resolution authorizing the Engineering Division to apply for a grant through the Arkansas Natural Resources Commission for the design and implementation of a stream bank restoration project along a section of the White River adjacent to the Fayetteville Executive Airport.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 148-09

8. **RFP # 09-07 Score American Soccer Company, Inc.:** A resolution accepting a proposal in response to RFP # 09-07 and approving the purchase of youth soccer uniforms from Score American Soccer Company, Inc. in the amount of $27,097.00 for the Fall 2009 and Spring 2010 Season.

   THIS ITEM WAS REMOVED FROM THE CONSENT AGENDA AND PLACED IN NEW BUSINESS.

9. **Wedington Drive Right-of-Way:** A resolution authorizing the donation of right-of-way along Wedington Drive containing .09 acres and being a part of parcel No. 765-13741-007, and authorizing the Mayor to execute deeds and all other necessary papers to transfer ownership of the property to the Arkansas State Highway Commission.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 149-09

B. Unfinished Business:

1. **RZN 09-3271 (Sale Barn/Campus Crest LLC, 562):** An ordinance rezoning that property described in rezoning petition RZN 09-3271, for approximately 8.87 acres, located at the old Washington County Sale Barn, north and east of 11th Avenue and Government Avenue from I-1, Heavy Commercial/Light Industrial, to DG, Downtown General. This ordinance was left on the First Reading at the June 16, 2009 City Council meeting.

   THIS ITEM WAS LEFT ON THE SECOND READING OF THE ORDINANCE.

2. **Box Avenue Appeal:** An ordinance rezoning that property described in rezoning petition RZN 09-3280, for approximately 1.20 acres, located at the northwest corner of Mission Boulevard and Box Avenue from R-O, Residential Office, to C-1, Neighborhood Commercial. This ordinance was left on the First Reading at the June 16, 2009 City Council meeting.

   THIS ITEM WAS TABLED INDEFINITELY.

C. New Business:

1. **Light Rail Transit System:** A resolution to support an alternatives analysis study to determine the feasibility of a light rail transit system in Northwest Arkansas.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 150-09

2. **ADM 09-3307 (Sustainable Yards):** An ordinance to amend § 95.01 Unsightly or Unsanitary Conditions on Real Property; Order and Notice To Correct of the Fayetteville Code to encourage properly maintained and managed naturalistic landscapes.

   PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5250

3. **National Cemetery Neighborhood Area Study:** A resolution to request that City Planning study the National Cemetery Neighborhood Area of South Fayetteville to propose a Master Plan.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 151-09

4. **Amend § 111.30 Retail:** An ordinance to amend § 111.30 Retail of the Code of Fayetteville to comply with new State law.

   PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5251

The following Resolution was removed from the Consent Agenda for discussion:

5. **RFP # 09-07 Score American Soccer Company, Inc.:** A resolution accepting a proposal in response to RFP # 09-07 and approving the purchase of youth soccer uniforms from Score American Soccer Company, Inc. in the amount of $27,097.00 for the Fall 2009 and Spring 2010 Season.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 152-09

Agenda Additions: NONE

Announcements:

1. **City Council Tour: July 6, 2009 – Noland Wastewater Treatment Plant – Fox Hunter Road**

Adjournment: Meeting adjourned at 9:15 p.m.

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

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City Council Meeting: July 7, 2009 **Adjourn:** 9:15

Subject:	Roll				
	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan	✓			

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

City Council Meeting: **July 7, 2009**

Subject:	**Consent**				
Motion To:		Approve	Remove #8	from Consent-	to end of
Motion By:		Cook		NB.	
Seconded:		Petty			
Item #8 Score American Soccer removed from Consent	**Petty**	✓			
	Rhoads	✓			
	Ferrell	✓			
Approved	**Lucas**	✓			
	Lewis	✓			
Minutes Approved	**Gray**	✓			
	Thiel	✓			
143-09- 149-09	**Cook**	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

City Council Meeting: **July 7, 2009**

Subject:	**RZN 09-3271 (Sale Barn/Campus Crest LLC, 562)**				
Motion To:		2nd Read			
Motion By:		Gray			
Seconded:		Lewis			
B. 1 Unfinished Business Left on the Second Reading	**Petty**	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Jordan				

8-0

Subject:	**Box Avenue Appeal**				
Motion To:		Table Indefinitely			
Motion By:		Cook			
Seconded:		Ferrell			
B. 2 Unfinished Business Tabled Indefinitely	**Petty**	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	absent during the vote			
	Cook	✓			
	Mayor Jordan				

7-0

City Council Meeting: **July 7, 2009**

Subject:	**Light Rail Transit System**				
Motion To:		Approve			
Motion By:		Ferrell			
Seconded:		Petty			
C. 1 New Business	**Petty**	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
Passed	**Gray**	✓			
	Thiel	✓			
	Cook	✓			
150-09	**Mayor Jordan**				
		8-0			

Subject:	**ADM 09-3307 (Sustainable Yards):**				
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Thiel	Petty		
Seconded:		Lucas	Gray		
C. 2 New Business	**Petty**	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Lewis	✓	✓	✓	
Passed	**Gray**	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
5250	**Mayor Jordan**				
		8-0	8-0	8-0	

City Council Meeting: **July 7, 2009**

Subject:	**National Cemetery Neighborhood Area Study**				
Motion To:		Amend	Amend name to Town Branch Neighborhood.	Pass	
Motion By:		Lewis	Lewis		
Seconded:		Thiel	Thiel		
C. 3 New Business	**Petty**	✓	✓	N	
	Rhoads	✓	✓	N	
	Ferrell	✓	✓	N	
	Lucas	✓	✓	✓	
	Lewis	✓	✓	✓	
passed	**Gray**	✓	✓	N	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
151-09	**Mayor Jordan**			Mayor Jordan voted yes to pass the resolution	
		8-0	8-0		5-4

Subject:	**Amend § 111.30 Retail**				
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Petty	Ferrell		
Seconded:		Ferrell	Petty		
C. 4 New Business	**Petty**	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
passed	**Lewis**	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
5251	**Mayor Jordan**				
		8-0	8-0	8-0	

City Council Meeting: **July 7, 2009**

Subject:	RFP # 09-07 Score American Soccer			
Motion To:	Approve			
Motion By:	Lewis			
Seconded:	Petty			
Removed from the Consent Agenda	**Petty** ✓			
	Rhoads ✓			
	Ferrell ✓			
	Lucas ✓			
	Lewis ✓			
	Gray ✓			
Passed	**Thiel** ✓			
	Cook ✓			
152-09	**Mayor Jordan**			

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Thiel				
	Cook				
	Mayor Jordan				

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams,** City Attorney

DATE: **July 8, 2009**

RE: **Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of July 7, 2009**

1. **U.S. Marshal's Service:** A resolution to approve a budget adjustment to recognize $25,000.00 in revenue from the U.S. Marshal's Service for police overtime costs;

2. **State and Tribal Assistance Grant (STAG):** A resolution authorizing the mayor to apply for a State and Tribal Assistance Grant in the amount of $286,400.00 from the U.S. Environmental Protection Agency for sanitary sewer system improvements; and designating the mayor at the City of Fayetteville's authorized representative in all matters relating to the procurement and administration of said grant;

3. **Drake Field Insurance Reimbursement**: A resolution approving a budget adjustment recognizing the receipt of insurance reimbursement and establishing a project budget to track expenses related to the demolition, cleanup and contingency replacement of the hangar building at Drake Field, that was destroyed by fire;

4. **Ice Storm 2009 Disaster:** A resolution approving budget adjustments totaling $377,291.00 to restore various operating budgets to funds and departments for cash expenses incurred in response to Ice Storm 2009 Disaster;

5. **Garver Engineers, LLC Amendment No. 4:** A resolution approving Amendment No. 4 to the contract with Garver Engineers, LLC to reduce the fee for construction phase services by $109,964.00 for Mount Comfort Road Improvements Contract 2, from Alpine Avenue to Rupple Road;

6. **Arkansas Natural Resources Commission Grant:** A resolution authorizing the Engineering Division to apply for a grant through the Arkansas Natural Resources Commission for the design and implementation of a stream bank restoration project along a section of the White River adjacent to the Fayetteville Executive Airport;

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8. **Wedington Drive Right-of-Way:** A resolution authorizing the donation of right-of-way along Wedington Drive containing .09 acres and being a part of Parcel No. 765-13741-007, and authorizing the Mayor to execute deeds and all other necessary papers to transfer ownership of the property to the Arkansas State Highway Commission;

9. **ADM 09-3307 (Sustainable Yards):** An ordinance to amend §95.01 **Unsightly or Unsanitary Conditions on Real Property; Order and Notice to Correct** of the Fayetteville Code to encourage properly maintained and managed naturalistic landscapes;

10. **Town Branch Neighborhood Area Study:** A resolution to request that City Planning staff consider the Town Branch Neighborhood area of South Fayetteville as a candidate for Master Planning;

11. **Amend §111.30 Retail:** An ordinance to amend §111.30 **Retail** of the Code of Fayetteville to comply with new state law.

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

Aldermen

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Final Agenda
City of Fayetteville Arkansas
City Council Meeting
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Mayor's Announcements, Proclamations and Recognitions

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A. Consent:

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C. New Business:

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4. **Amend § 111.30 Retail:** An ordinance to amend § 111.30 Retail of the Code of Fayetteville to comply with new State law.

Agenda Additions:

Announcements:

1. **City Council Tour: July 6, 2009 – Noland Wastewater Treatment Plant – Fox Hunter Road**

Adjournment:

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A. 6
7/7/09

RESOLUTION NO. _____

A RESOLUTION APPROVING AMENDMENT NO. 4 TO THE CONTRACT WITH GARVER ENGINEERS, LLC TO REDUCE THE FEE FOR CONSTRUCTION PHASE SERVICES BY $109,964.00 FOR MOUNT COMFORT ROAD IMPROVEMENTS CONTRACT 2, FROM ALPINE AVENUE TO RUPPLE ROAD.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby approves Amendment No. 4 to the contract with Garver Engineers, LLC to reduce the fee for construction phase services by $109,964.00 for Mount Comfort Road Improvements Contract 2, from Alpine Avenue to Rupple Road. A copy of the Amendment, marked Exhibit "A," is attached hereto and made a part hereof.

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED: ATTEST:

By: _____ By: _____
LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

A. 7.
7/7/09

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ENGINEERING DIVISION TO APPLY FOR A GRANT THROUGH THE ARKANSAS NATURAL RESOURCES COMMISSION FOR THE DESIGN AND IMPLEMENTATION OF A STREAM BANK RESTORATION PROJECT ALONG A SECTION OF THE WHITE RIVER ADJACENT TO THE FAYETTEVILLE EXECUTIVE AIRPORT.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Engineering Division to apply for a grant through the Arkansas Natural Resources Commission for the design and implementation of a stream bank restoration project along a section of the White River adjacent to the Fayetteville Executive Airport.

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

A.8.
7/7/09

RESOLUTION NO. _____

A RESOLUTION ACCEPTING A PROPOSAL IN RESPONSE TO RFP #09-07 AND APPROVING THE PURCHASE OF YOUTH SOCCER UNIFORMS FROM SCORE AMERICAN SOCCER COMPANY, INC. IN THE AMOUNT OF $27,097.00 FOR THE FALL 2009 AND SPRING 2010 SEASON.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby accepts a proposal in response to RFP #09-07 and approves the purchase of youth soccer uniforms from Score American Soccer Company, Inc. in the amount of $27,097.00 for the Fall 2009 and Spring 2010 Season.

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED: ATTEST:

By: _____ By: _____
LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

AGENDA REQUEST

Added at Agenda Session
6/30/09

FOR: COUNCIL MEETING OF JULY 7, 2009

FROM:
COUNCIL MEMBER SARAH LEWIS

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution To Request That City Planning Study The National Cemetery Neighborhood Area Of South Fayetteville To Propose A Master Plan

APPROVED FOR AGENDA:

Sarah Lewis
Council Member

6/30/09
Date

Kit Williams
City Attorney (as to form)

6/30/09
Date

New resolution

Agenda Session

6/30/09

RESOLUTION NO. _____

A RESOLUTION TO REQUEST THAT CITY PLANNING STUDY THE NATIONAL CEMETERY NEIGHBORHOOD AREA OF SOUTH FAYETTEVILLE TO PROPOSE A MASTER PLAN

WHEREAS, the City of Fayetteville's Planning Department has successfully studied, listened to citizen and land owner comments and prepared excellent Master Plans for the Walker Park Neighborhood and Fayetteville Junction Master Plan areas of south Fayetteville; and

WHEREAS, both of these Master Plans were eventually approved by the Planning Commission and City Council; and

WHEREAS, both of these Master Plans were effectuated by the neighborhood rezonings approved by most of the citizens and landowners, recommended by the Planning Commission and enacted by the City Council; and

WHEREAS, the neighborhood between these two master planned areas and around the National Cemetery would benefit from such master planning with appropriate rezoning.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby requests that City Planning Staff study the National Cemetery Neighborhood area as shown on the attached map, prepare a Master Plan, and recommend eventual rezonings to accomplish the Master Plan for this area.

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

National Cemetery Neighborhood

N

0 250 500 1,000 Feet

- Proposed National Cemetery Neighborhood
- Downtown Master Plan Area
- Walker Park Neighborhood
- Fayette Junction

June 30, 2009

Added at Agenda Session 6/30/09

AGENDA REQUEST

FOR: COUNCIL MEETING OF JULY 7, 2009

FROM:
CITY ATTORNEY KIT WILLIAMS

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:
An Ordinance To Amend §111.30 **Retail** Of The Code Of Fayetteville To Comply With New State Law

APPROVED FOR AGENDA:

Kit Williams
City Attorney

6-30-09
Date

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council
Greg Tabor, Police Chief
Paul Becker, Finance Director

FROM: **Kit Williams**, City Attorney

DATE: **June 30, 2009**

RE: **Act 294 of 2009 changes in alcoholic beverage control law relating to Sunday sales, permit fees, etc.**

Attached please find the Police Department's recommended changes and additions to Chapter 111 **Alcoholic Beverages** of the Fayetteville Code in response to Act 294 of 2009. I certainly concur in the need to amend §111.30 **Retail** (C) *Retail beer and light wine on-premises permit* and (E) *On-premises consumption – Hotel, motel or restaurant permit* related to their hours of operation provisions.

Act 294 apparently made no change to the regulation of private clubs or retail off-premises hours. However, the citizens may refer an ordinance to the voters to allow the sale of alcoholic beverages for off-premises consumption on Sundays. The normal referendum requirement of 15% of the last general election voters is needed to call a referred election on Sunday sales for liquor stores.

The Police Department recommends the creation of a new Restaurant Beer and Wine Permit to made the new A.C.A. §2-4-1001 *et seq.* state law created by Act 294. I have drafted a proposed new subsection (H) *Restaurant Beer and Wine Permit* pursuant to the Police Department's recommendation.

I also agree with the Police Department's recommendation that we amend subsection (G) *Satellite catering permit* by renaming it: "Off-premises caterer's permit" as it is now referred to by A.C.A. §3-4-901. I will draft a new proposed subsection (G) *Off-premises caterer's permit* for your consideration.

I will await your decision about extending the alcoholic beverage serving hours on a Sunday when it falls on New Year's Eve. State law allows such an extension from the normal ending hour of 10:00 P.M. to 2:00 A.M. the next day. New Year's Eve for 2009 is on a Thursday; 2010 is on Friday; and 2011 is on Saturday.

Even though the new Restaurant Beer and Wine Permit should require a $175.00 city permit fee, new permit fees cannot take effect until July 1, 2010.

> "The permit fees increased or established in this act (294) shall become effective beginning with the 2010-2011 renewal and new permit period." Section 29 of Act 294.

Therefore, any changes to the Fayetteville Code concerning new or increased fees cannot be effective until July 1, 2010, when the City's permits are issued on a fiscal year basis. I am still studying the new provisions about alcoholic beverage **wholesalers**. There is a new "*Minimum wholesale liquor permit*" with a **$2,500.00** state fee. A.C.A. §3-4-607. However, the legislature kept A.C.A. §3-4-605 *Wholesalers* and expanded it to include not only liquor, wine and malt liquors, but beer and kept its permit fee at **$700.00**. I have yet to determine why a wholesaler would seek the new "Minimum wholesale liquor permit" at more than three times the cost of the existing wholesale liquor permit.

Similarly a beer or wine wholesales must pay "a special tax of **$250.00**" to operate in each county (capped at $1,000.00 regardless the number of counties serviced). Why would a beer distributer (wholesaler) seek a more expensive permit ($700.00 or $2,500.00) to wholesale beer here? Is this "tax" in **addition** to the wholesale permit fee? I will try to figure out this new law prior to July 1, 2010.

Attached is a proposed ordinance changing the Sunday sales ordinances to conform with state law.

City Ordinance 111 Recommendations for Changes and Additions

Recommended Changes

Recommended Change #1: In Retail beer and light wine on-premises permit Hours of Operation p. 9, redefine hours of operation language and remove "on Sunday". (State law p. 2 now affords, "A person that holds a permit that allows the on-premises consumption of alcoholic beverages may operate on Sundays between the hours of 10:00 a.m. and 12:00 midnight".)

Recommended Change #2: In On-premises consumption-Hotel, motel or restaurant permit Hours of Operation p. 10, remove "on any Sunday", and remove "unless that establishment has a valid Sunday Sales permit issued by the ABC. If an establishment has a valid Sunday Sales permit, its hours of operation on Sunday shall be governed by state law (A.C.A $3-9-215)". (State law p. 2 now affords, "A person that holds a permit that allows the on-premises consumption of alcoholic beverages may operate on Sundays between the hours of 10:00 a.m. and 12:00 midnight".)

Recommended Additions

Recommended Addition #1: Creation of Restaurant Beer and Wine Permit to match new permit in state law (State law p. 9 creates state restaurant beer and wine permit).

Recommended Addition #2: Create off-premises caterer's permit to match the state off-premises caterer's permit. (This was a concern prior to this new state law in that the city's satellite caterer's permit language does not match the caterers' permits that have been issued by the state to several caterers operating in Fayetteville)

Recommended Addition #3: Consider adding additional hours of operation on Sundays that fall on New Year's Eve 10:00 a.m. to 2:00 a.m. (to match state law p. 15, extended hours on December 31st falling on Sunday)

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §111.30 **RETAIL** OF THE CODE OF FAYETTEVILLE TO COMPLY WITH NEW STATE LAW

WHEREAS, Act 294 of 2009 significantly changed state law concerning Sunday sales of alcoholic beverages and various permits pertaining to wholesale or retail alcoholic beverages.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends §111.30 **Retail** subsection (C) *Retail beer and light wine on-premises permit* by repealing subsection (2) *Hours of operation* and enacting a new, replacement subsection (2) as follows:

> "(2) *Hours of operation.* It shall be unlawful for any person to serve, sell, offer for sale, or give away for consumption on-premises any beer or light wine between the hours of 1:00 a.m. and 7:00 a.m. on Monday through Saturday, on Sunday except during the hours of 10:00 a.m. until midnight, on Christmas Day, or during any 24-hour interval designated an emergency period by the mayor, City Council, or any person acting in the mayor's or the City Council's capacity."

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends §111.30 **Retail** by repealing subsection (E) *On-premises consumption – Hotel, motel or restaurant* permit, by repealing subsection (3) *Hours of operation and* enacting a replacement subsection (3) as follows:

> "(3) *Hours of operation.* It shall be unlawful for any person holding an on-premises consumption hotel, motel or restaurant permit to sell, offer for sale, serve, give away, or permit consumption of any controlled beverages between the hours of 2:00 a.m. and 10:00 a.m. on Monday through Saturday, on Sunday except between the hours of 10:00 a.m. until midnight, on Christmas Day, or during any 24-hour interval designated an emergency period by the mayor, City Council, or any person acting in the Mayor's or the City Council's capacity."

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends §111.30 **Retail** by repealing subsection (G) in its entirety and enacting a replacement subsection (G) as shown below:

> "(G) *Off-premises caterer permit.* Authorizes the purchase of alcoholic beverages from a retailer to transport to a private function which is being catered by the permit holder and to serve alcoholic beverages to attendees of the private function in conjunction with catered food.
>
> "(1) *Permit fee.* There is hereby levied an annual permit fee of $100.00 for July 1, 2009 through June 30, 2010 and $250.00 on July 1, 2010, and thereafter.
>
> "(2) *Supplemental beverage tax.* Off-premises catering activities will be subject to the same supplemental beverage taxes, due dates, and penalties as on-premises consumption hotel, motel, or restaurant permittees in §111.30(E).
>
> "(3) *Hours of operation.* The hours of operation for an off-premises catering permittee shall be the same as those allowed for on-premises consumption hotel, motel, or restaurant permittees in §111.30(E)."

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

City of Fayetteville Arkansas
City Council Meeting Minutes
June 16, 2009

A meeting of the Fayetteville City Council was held on June 16, 2009 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

PRESENT: Alderman Gray, Thiel, Cook, Petty, Rhoads, Ferrell, Lucas, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

FHS Baseball Team Proclamation

Mayor Jordan read a proclamation honoring the Fayetteville High School Baseball Team for winning the State Championship.

Presentations, Reports and Discussion Items:

Nominating Committee Report

Alderman Cook read the Nominating Committee report. A copy of the report is attached.

Alderman Gray moved to approve the Nominating Committee Report. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

Consent:

Approval of the June 2, 2009 City Council meeting minutes.

Approved

Bid # 09-24 Downing Sales and Service: A resolution to award Bid # 09-24 to Downing Sales and Service to approve the purchase of a front load Solid Waste truck in the amount of $220,890.00 and to approve a budget adjustment of $36,000.00.

Resolution 121-09 as Recorded in the office of the City Clerk.

Bid # 09-28 Lewis Ford: A resolution approving the purchase of an additional compact 2x4 extended cab pickup truck under Bid # 09-28 from Lewis Ford in the amount of $15,987.00 for use by the Meter Operations.

Resolution 122-09 as Recorded in the office of the City Clerk.

Bid # 09-36 Henard Utility Products: A resolution awarding Bid # 09-36 and approving the purchase of one (1) trailer mounted sewer cleaner from Henard Utility Products of Searcy in the amount of $52,176.00 plus tax for use by the Water & Sewer Division; and approving a budget adjustment.

Resolution 123-09 as Recorded in the office of the City Clerk.

Bid # 09-37 Landers-McLarty Ford: A resolution awarding Bid # 09-37 and approving the purchase of one (1) cab & chassis with dump body from Landers-McLarty Ford of Bentonville in the amount of $34,783.03 for use by the Parks, Recreation & Community Spaces Division.

Resolution 124-09 as Recorded in the office of the City Clerk.

Fourth Amendment to Articles of the Incorporation of the Walton Arts Center Foundation: A resolution to approve the Fourth Amendment to Articles of Incorporation of the Walton Arts Center Foundation, Inc.

Resolution 125-09 as Recorded in the office of the City Clerk.

Bid # 09-38 MHC Kenworth/Volvo: A resolution awarding Bid # 09-38 and approving the purchase of one (1) diesel powered tandem axle dump truck from MHC Kenworth/Volvo of Springdale in the amount of $110,299.25 for use by the Water & Sewer Division; and approving a budget adjustment.

Resolution 126-09 as Recorded in the office of the City Clerk.

Bid # 09-39 MHC Kenworth/Volvo: A resolution awarding Bid # 09-39 and approving the purchase of one (1) diesel powered tandem axle dump truck with square body from MHC Kenworth/Volvo of Springdale in the amount of $109,190.00 for use by the Transportation Division.

Resolution 127-09 as Recorded in the office of the City Clerk.

Bid # 09-40 Landers Ford Lincoln Mercury: A resolution to award Bid # 09-40 to Landers Ford Lincoln Mercury in the amount of $32,745.00 for a ¾-Ton Pickup Truck.

Resolution 128-09 as Recorded in the office of the City Clerk.

Bid # 09-41 Dean Crowder Construction, Inc.: A resolution awarding Bid # 09-41 and approving a construction contract with Dean Crowder Construction, Inc. in the amount of $1,360,185.43 for improvements to Township Street from Gregg Avenue to North College Avenue; and approving a 15% project contingency in the amount of $204,028.00.

Resolution 129-09 as Recorded in the office of the City Clerk.

Bid # 09-43 Power Curbers, Inc.: A resolution to award Bid # 09-43 to Power Curbers, Inc. in the amount of $25,017.08 plus tax for the purchase of a trimmer for the curber machine and approve the attached budget adjustment.

Resolution 130-09 as Recorded in the office of the City Clerk.

Bid # 09-44 Wheeler Lumber, LLC: A resolution awarding Bid # 09-44 and approving the purchase of one (1) prefabricated steel trail bridge from Wheeler Lumber, LLC in the amount of $105,250.00 plus tax for the Lake Fayetteville Trail.

Resolution 131-09 as Recorded in the office of the City Clerk.

Mobile-Vision, Inc.: A resolution approving the purchase of five (5) additional in-car video systems from Mobile-Vision, Inc. in accordance with the continuing bid waiver granted by Ordinance No. 4551 of 2004, in the amount of $30,500.71 for use by the Fayetteville Police Department.

Resolution 132-09 as Recorded in the office of the City Clerk.

2009 Bulletproof Vest Partnership Program Grant: A resolution to approve the 50% matching grant application for the bulletproof vest partnership with the Department of Justice in the amount of $39,199.82 for 54 body armor vests.

Resolution 133-09 as Recorded in the office of the City Clerk.

Arkansas Department of Environmental Quality Recycling Grant: A resolution authorizing the Fayetteville Solid Waste & Recycling Division to accept an Arkansas Department of Environmental Quality Grant through Boston Mountain Solid Waste District in the amount of $25,000.00 to fund the purchase of recycling containers for collection at Fayetteville Public Schools; and approving a budget adjustment recognizing the grant revenue.

Resolution 134-09 as Recorded in the office of the City Clerk.

American Recovery and Reinvestment Act (ARRA): A resolution authorizing the Fayetteville Fire Department to apply for an American Recovery and Reinvestment Act (ARRA) Assistance to Firefighters Station Construction Grant in the amount $5,000,000.00 for the replacement and relocation of Fire Station # 2.

Resolution 135-09 as Recorded in the office of the City Clerk.

Alderman Petty moved to approve the Consent Agenda as read. Alderman Gray seconded the motion. Upon roll call the motion passed unanimously.

The following ordinance was added to the agenda.

Mayor Jordan: We have an addition to the Agenda. Is that correct?

City Attorney Kit Williams: We would ask that the City Council suspend the rules and place on the agenda for consideration, an ordinance that would amend the Unified Development Code by enacting a new Section 164.20 Approval of Vital Municipal Facility.

Alderman Cook moved to suspend the rules and add the item titled Amend Chapter 164: Supplementary Zoning Regulation to the agenda. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

Amend Chapter 164: Supplementary Zoning Regulation: An ordinance to amend Chapter 164: Supplementary Zoning Regulation by enacting a new § 164.20 Approval of Vital Municipal Facility and to approve an emergency clause.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams stated in consultation with Jeremy Pate and the staff we determined that if there was going to be another potential location for the water tower to be located near the Hyland Park addition, the location which was presented to the homeowners would not fit the formal requirements of a normal lot split. He described the current requirements and why the ordinance needed to be approved.

Alderman Lewis: Does this change public notice on something like this?

City Attorney Kit Williams: It does not. There is no public notice required. There has to be a public hearing. The public will be notified as with any ordinance or resolution that comes before the City Council. There is not specifically public notice within this to notify every resident that is around it.

Alderman Lewis: But it has a public hearing?

City Attorney Kit Williams: It must have a public hearing. It has to have a two thirds vote which means it has to have six affirmative votes to pass which provides a little additional protection for the public interest.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5245 as Recorded in the office of the City Clerk.

City Attorney Kit Williams: We need a separate vote on the emergency clause. This one is clearly to protect the public health and safety so I recommend that you pass the emergency clause.

Alderman Ferrell moved to approve an Emergency Clause. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

Unfinished Business:

Hyland Park Phase II – Water Storage Tank: A resolution to accept and approve the City Council Sewer Committee's decision to begin construction plans for a 500,000 gallon water storage tower on Lot 22 of Hyland Park Phase II. *This resolution was tabled at the June 9, 2009 City Council meeting to the June 16, 2009 City Council meeting.*

Mayor Jordan: Since we last met Mr. Waselues came to the City with a proposal and I would like him to make that proposal to you now.

Jim Waselues presented his proposal to the City Council. He presented what he felt was the least intrusive option. He stated I negotiated with Mr. Combs for his Lot 7 of the John Smith

addition to offer him $75,000 for Lot 7. Mr. Combs would in turn donate $125,000 to the City because he considers the lot to be worth over $200,000. I would give the City $75,000 to make this transition happen and to release Lot 22 to myself in the Hyland Park addition. Upon completion of this transaction I would give the interest of Lot 22 to the Hyland Park Homeowner's Association.

City Attorney Kit Williams: The first contract is one that Mr. Waselues was able to obtain Mr. Combs signature on, that was for a two thirds of an acre lot. This is the same area that Mr. Jurgens has identified as an acceptable location for a water tower. It is somewhat more expensive to construct the tower on. The second contract is a contract where Mr. Waselues agrees to pay us $75,000 and we agree to Quit Claim any of our interest in Lot 22 to him.

Mr. Williams explained the Quit Claim process. He stated the $75,000 would be used to pay Mr. Combs and he would make a claim to the IRS that Lot 7 was worth $125,000 more as his contribution to the City. We certify to the IRS that we received the property not the value of it.

Mayor Jordan: You can vote this up or down tonight or wait until the next Council meeting. We wanted to give you both options.

City Attorney Kit Williams: I redrafted a resolution if you want to go in Mr. Waselues's direction but that is probably premature until we hear public comment. There would be an amended resolution with the change in location.

Alderman Petty: Can we hear the opinion of Mr. Jurgens on this before public comment.

David Jurgens, Utilities Director: This is the same location that I recommended last week at the City Council meeting. I concur with this being an excellent choice.

Alderman Lucas: Is it correct that it would cost $200,000 more?

David Jurgens: Yes Ma'am. The estimate was about $230,000 more because the tower will have to be taller, the lot is sloped a little so there will have to be retaining walls. It is further off the paved road so there would have to be a longer driveway with asphalt and there is a little more piping involved.

Alderman Lucas: Where is the money going to come from if we decide to do this?

David Jurgens: The money would come out of the Water and Sewer fund. When we bid the project the intent would be to bid three different types of tank constructions and take the lowest of the three bids. At that time we will see if we have to bring forward a budget adjustment to come out of Water and Sewer funds or if we can do it within the budget. We have three different sources of budgeting. Most of this is out of impact fees, some is out of Water and Sewer funds, and then some is the developer match.

Alderman Petty: Could you tell us again how much is in the budget for this project.

David Jurgens: At this point we have about $2.2 million in the budget plus the $75,000 from the developer match.

Alderman Ferrell: Mr. Waselues what do you think the attitude of the POA is with this change that is being proposed?

Jim Waselues: I would hate to say. I really don't know.

Alderman Thiel: Since there was no comment from the other neighbors and we have a recommendation from David Jurgens that this is one of the best sites I feel like we should move forward.

William Mills, resident of 2448 Boston Mountain View: This would place it behind my house. There is an easement directly behind our lot and I am curious is that where the City is going to put the street?

David Jurgens: No. There is a 60 foot undedicated pathway or strip of land that was identified as a road right of way and we would intend to put the driveway within that. None of the construction would take place on any lot that is Hyland Park Phase II.

City Attorney Kit Williams: You said undedicated. Was it shown on the plat as an easement?

David Jurgens: There were parts of that 60 foot strip that were shown as an easement but most of it was shown as a void between two separate subdivisions.

City Attorney Kit Williams: Is the part where we would be building our driveway shown as an easement or was it just a blank area?

David Jurgens: It was part of the blank area.

City Attorney Kit Williams: I think it is premature for us to approve anything. I was assuming that the area was in fact a dedicated part of the plat. I think we will have cooperation from the individual that owns that. However I would hate to go forward with something unless we made it contingent upon getting access. I don't want us to get a lot and then not be able to reach it without having to buy a new access. If you wanted to go forward we could do it contingent upon receiving free access across that. As it was shown on the plats that I saw it looked like it was an un-built but not necessarily undedicated roadway so that concerns me a little bit.

David Jurgens: I don't want to swear that it is either of the above having not seen the plats either myself.

Alderman Ferrell: Kit said we could pass it and it would be contingent upon us having access. Although I am not crazy about spending $200,000 more I think it displays the City's willingness to try and be flexible. Mr. Waselues has worked in trying to make this the least offensive.

Alderman Petty: I am amazed at how much energy that Mr. Waselues has put into this to try and find a solution. If we don't know the status of this easement I worry that even if we approve it with a contingency clause, if this comes back to us and we do not have the access the City is going to look like it has egg on its face. We have had so much difficulty with this already. So unless we are sure I am not sure I would want to move forward either.

City Attorney Kit Williams: What I would add is that "upon acquisition of access from Canterbury hereby determines" and go on from there. That would make the final determination contingent upon having obtaining the access from Canterbury that I think we can get. There has been assistance for Mr. Waselues from the individual that owns this. I think he would be in favor of granting access.

Alderman Gray: I just wanted to say that this is the best way to have things end so that maybe everyone is not totally satisfied but I think it is a good deal. I want to commend the staff, our attorney, and the homeowners for working together to find a feasible solution to this huge problem for a great number of citizens of the City of Fayetteville.

Alderman Cook moved to amend the resolution to state "*upon acquisition of access from Canterbury hereby determines***" as recommended by the City Attorney. Alderman Thiel seconded the motion.**

Alderman Lewis: If we say yes and then there is not access that does not change our discussion next time either way right?

City Attorney Kit Williams: Yes, it would have to be brought back because the resolution would be ineffective because we could not get access and therefore the resolution would have to be reconsidered because it was not effective.

Alderman Lewis: So putting this in there, we would have the opportunity if it works out between now and then to move on.

City Attorney Kit Williams: At that point it would be effective and it would be finished. The access would be supplied to the City free of charge. That was always the understanding that if we were going to trade Lot 22 it was going to be of no charge to the City of Fayetteville.

Alderman Lucas: Is that in here somewhere?

City Attorney Kit Williams: That is what our agreement with Mr. Waselues says.

Alderman Lucas: In light of the problems over the legality of Lot 22 I think it needs to be spelled out completely on all of this.

City Attorney Kit Williams: It will be spelled out in the deeds that we will get from the parties.

Don Marr, Chief of Staff: I would like to ask that because you changed this resolution completely from what was published in the packet online that the City Attorney at least read what was handed out so the public will have that information.

City Attorney Kit Williams read the changed sections of the ordinance.

Alderman Lucas moved to amend the amendment to state *upon acquisition access from Canterbury* ***at no cost to the City.*** **Alderman Ferrell seconded the motion.**

City Attorney Kit Williams: I accept that as a friendly amendment and you do not have to vote.

Alderman Gray: In the fourth whereas it says that the $125,000 will come from Lover's Lane, LLC and I thought it was coming from Mr. Combs.

City Attorney Kit Williams: He is the owner basically of that LLC.

Upon roll call the motion to amend passed unanimously.

Alderman Lucas: I am not happy about it costing the City more money but I think we need to move along and get this water tower up for fire safety. I appreciate all the efforts that were made by Mr. Waselues and the City. I will support it.

Mayor Jordan: I want to thank Kyle Cook and the Water and Sewer Committee for all their work on this too because they spent months on this last year.

Alderman Gray moved to approve the resolution. Alderman Ferrell seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 137-09 as Recorded in the office of the City Clerk.

The following resolution was added to the agenda.

City Attorney Kit Williams: There is one final step we need to make. It is a resolution to approve a lot split from Lot 7 of the John Smith addition and to approve the construction thereon of a 500,000 gallon water tower to serve the Mt. Sequoyah pressure plain. This needs to be passed under the ordinance that you just passed in order to authorize the construction of the water tower and authorize the lot split which must be conformed in this area.

Alderman Petty moved to amend the agenda and add John Smith addition Lot 7 lot split. Alderman Lucas seconded the motion.

Alderman Lucas: Is this contingent upon us obtaining access?

City Attorney Kit Williams: If we don't get access I will ask you to revoke this.

Upon roll call the motion passed unanimously.

John Smith Addition Lot 7 Lot Split: A resolution to approve a lot split from Lot 7 of the John Smith addition and to approve the construction thereon of a 500,000 gallon water tower to serve the Mt. Sequoyah Pressure Plane.

John Smith Addition Lot 7 Lot Split Public Hearing

Mayor Jordan opened the Public Hearing.

There was no Public Comment

Mayor Jordan closed the Public Hearing.

Alderman Lewis: If we move forward on the water tower and the lot split, they need to be tandem is that correct?

City Attorney Kit Williams: Yes we certainly cannot move forward with the water tower until there is a place to build it and that requires a lot split. You would be authorizing construction and that is why these two things are necessary in order for this project to move forward.

Alderman Ferrell moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 136-09 as Recorded in the office of the City Clerk.

Hyland Park Phase II – Declaratory Judgment Action: A resolution to authorize the Fayetteville City Attorney to file a declaratory judgment action or other appropriate request for judicial relief concerning the ownership of Lot 22 of Hyland Park Phase II and the City's right to construct a water tower thereon. *This resolution was tabled at the June 9, 2009 City Council meeting to the June 16, 2009 City Council meeting.*

Alderman Petty: Would it be better if we tabled this indefinitely?

City Attorney Kit Williams: Yes, that is the appropriate thing to do.

Alderman Ferrell moved to table the resolution indefinitely. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

This item was tabled indefinitely.

Bid # 09-34 Runway Safety Area Improvement Project: A resolution awarding Bid # 09-34 and approving a contract with Sweetser Construction, Inc. in the amount of $3,017,900.15 for construction of the Runway 16 Runway Safety Area Improvement Project. *This resolution was tabled at the May 5, 2009 City Council meeting to the May 19, 2009 City Council meeting. This resolution was tabled at the May 19, 2009 City Council meeting to the June 2, 2009 City Council meeting. This resolution was tabled at the June 2, 2009 City Council meeting to the June 16, 2009 City Council meeting.*

Ray Boudreaux, Aviation and Economic Development Director: I am happy to say that the grant has been approved and we are ready to award the contract for construction of the runway safety area improvement project.

Alderman Thiel moved to approve the resolution. Alderman Ferrell seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 138-09 as Recorded in the office of the City Clerk.

McClelland Consulting Engineers, Inc.: A resolution to approve Task Order No. 1 for engineering services by McClelland Consulting Engineers for Runway 16 Safety Improvements in the amount of $231,100.00 and to approve a budget adjustment of $231,096.00. *This resolution was tabled at the May 19, 2009 City Council meeting to the June 2, 2009 City Council meeting. This resolution was tabled at the June 2, 2009 City Council meeting to the June 16, 2009 City Council meeting.*

Ray Boudreaux: We don't think we need the budget adjustment because we put all the grant money into a project budget.

Paul Becker, Finance and Internal Services Director: At the last Council meeting we approved the grant award for this project. When this resolution was originally placed on the agenda we anticipated that we would have to recognize part of that amount within this resolution to continue. However since we already accepted and appropriated the grant funding we no longer need the budget adjustment. I am asking that our reference to the budget adjustment be stricken from this resolution.

Alderman Thiel moved to amend the resolution to remove the budget adjustment. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

Alderman Ferrell moved to approve the resolution. Alderman Cook seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 139-09 as Recorded in the office of the City Clerk.

Utilities Department Positions: A resolution to amend the 2009 Budget to authorize and fund two full time employee positions for project design and management of Utilities Department

projects and to approve the attached budget adjustment to reduce the overall Water and Sewer Budget by $250,000.00. *This resolution was tabled at the June 2, 2009 City Council meeting to the June 16, 2009 City Council meeting.*

David Jurgens gave a brief description of the positions and expressed the importance of the positions. He stated this was brought forward with a budget reduction because we have demonstrated through doing work in house we have been able to save consulting fees.

Alderman Cook: David's team has demonstrated their abilities and I have been happy with what they have done and what they are capable of doing. One thing I like about it is we are keeping it in house and reducing our cost on consultants. I think in the long run we are going to be better served to add these positions.

Alderman Ferrell: This says to serve as Operational Division Head for the Wastewater Treatment Division. How many direct report division managers will this make you?

David Jurgens: This would be three direct report division managers.

Alderman Ferrell: I am going to support this but when the economy changes and things pick up I am going to look at your department like you are two ahead so remember that.

Mayor Jordan: One thing that we need to do if this is passed is this time next year we look at the amount of savings that we have gotten by putting these two employees on and see if the $250,000 savings is there.

Alderman Lewis: Can you describe what projects are planned?

David Jurgens gave a description of the planned projects.

Alderman Lucas: What is the total cost for these two positions?

David Jurgens: The cost for the six month period of this year was estimated at $50,000 to $60,000 and the other administrative costs were about $7,000. Next year the cost would be about $150,000. We will actually reimburse these positions out of the capital projects they are working on.

Alderman Lucas: I have a struggle hiring two people in this economy at this caliber. If we assess this in a year we are not going to let the people go so whether we save the money or not they are there.

Alderman Lewis: The projects that David mentions here are on going and many of them are required by entities beyond the city. The fact that we have skilled people already that know the City and the community it seems like a good investment.

Alderman Cook moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed 7-1. Alderman Lucas voting no.

Resolution 140-09 as Recorded in the office of the City Clerk.

New Business:

Procter & Gamble: A resolution accepting a donation from Procter & Gamble in the amount of $30,000.00 to fund a portion of the development costs for a Dog Park at Bryce Davis Park; and approving a budget adjustment recognizing the revenue.

Connie Edmonston, Parks and Recreation Director gave a brief description of the park.

Neelam Modi, representative of IAMS introduced his team members and expressed the importance of a Dog Park in Fayetteville.

Alderman Lucas thanked Proctor and Gamble for their donation. We are happy to have this nice park in Ward 4.

Alderman Cook asked what the schedule was like for when this will happen.

Neelam Modi: I think the details are still being worked on. We would like to break ground in the early part of next year and would like to have it open by spring time.

Alderman Petty: We were happy when Proctor and Gamble located in Fayetteville and we hope you never leave. Thank you so much.

Mayor Jordan thanked Proctor and Gamble on behalf of the City for their donation to this park. It is important to us.

Alderman Marr: On behalf of the staff we just want to say thank you to all of you.

Alderman Lucas moved to approve the resolution. Alderman Ferrell seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 141-09 as Recorded in the office of the City Clerk.

VAC 09-3269 (Schmitt, 298): An ordinance approving VAC 09-3269 submitted by Jorgensen and Associates for property located at 2614 Timberglen Lane to vacate an 875 square foot portion of a utility easement along the west side of the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the ordinance.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Petty seconded the motion. Upon roll call the motion passed 6-0. Alderman Cook and Lucas were absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5246 as Recorded in the office of the City Clerk.

VAC 09-3281 (Means/1661 Cypress Ln., 370): An ordinance approving VAC 09-3281 submitted by David Means for property located at 1661 East Cypress Lane to vacate an 84.4 square foot portion of a utility easement along the north side of the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance.

Alderman Lewis: If it is sold and resold again does the water go through there?

Jeremy Pate: It is a utility easement but I am not sure that there are any utilities located within that area. Most of the utilities within this subdivision are located underneath the street and in the alley behind this development. Other utilities do have access to it but essentially what you would do with this approval would be vacating the rights to utilize the portion of the easement described in this area. We require the applicant to go to each one of the utility providers and get letters of consent. If we do not get consent letters we do not even recommend that the applicant come forward with the application.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Rhoads was absent during the vote.

Ordinance 5247 as Recorded in the office of the City Clerk.

VAC 09-3282 (U of A 20th Street, 601): An ordinance approving VAC 09-3282 submitted by Allen Young for property located at the University of Arkansas Research and Technology Park and South School Avenue to vacate approximately 86,684 square foot of right-of-way for 20th Street, lying within the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated the Planning Commission voted 8-0 in favor of this item.

Alderman Lucas: Did you say the utility easements will stay?

Jeremy Pate: Yes ma'am. That is one of the conditions of approval.

Alderman Ferrell: Deeding this land to the University certainly helps us right now and in the future.

Allen Young with Development Consultants Inc. representing the University: I am happy to entertain any questions that you may have.

Alderman Cook moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Petty was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the third and final reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Petty was absent during the vote.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5248 as Recorded in the office of the City Clerk.

Quitclaim Deed for 20th Street and Access Land: A resolution to approve two quitclaim deeds to the University of Arkansas to convey the vacated 20th Street and a second small area which had been retained for access.

City Attorney Kit Williams gave a brief description of the item. He stated this is to ensure that there are no questions about the University's full ownership of this property.

Alderman Lewis: You are saying the utilities are there. What happens if you have to tear it all up and fix the water line?

Jeremy Pate: The City would retain the rights with the utility easement regardless of whose property it is.

Alderman Ferrell moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 142-09 as Recorded in the office of the City Clerk.

RZN 09-3271 (Sale Barn/Campus Crest LLC, 562): An ordinance rezoning that property described in rezoning petition RZN 09-3271, for approximately 8.87 acres, located at the old Washington County Sale Barn, north and east of 11th Avenue and Government Avenue from I-1, Heavy Commercial/Light Industrial, to DG Downtown General.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the item. He stated the Planning Commission voted 6-1 on this particular site.

Alderman Lucas: What is the purple area that goes along School Street?

Jeremy Pate: That is Downtown General.

Alderman Thiel: What is the lighter green that is to the east on the Neighborhood Plan?

Jeremy Pate: That is P-1 Institutional which is where the park is located. The dark green north of Spout Spring Branch is Neighborhood Conservation.

Alderman Thiel: So it is adjacent to what we are looking at.

Jeremy Pate: Neighborhood Conservation in the downtown the uses are primarily single family and two family but it does include some nonresidential uses by virtue of the fact that they were already there.

Alderman Lewis: Are there lights being proposed at 11th Street, School Street, Government and Martin Luther King Jr.? I was thinking about the traffic. If you deny RMF-24 Downtown General would allow the same amount of density is that right?

Jeremy Pate: Yes, both allow residential uses. The Downtown General does not have a density limitation. It has height and lot use limitations.

Jeremy explained the Downtown General zoning and the density allowed in the zoning.

The City does not have any plans on signalizing those intersections. If a development comes through that is something that we always look at to see if signalization is warranted. We would expect a traffic study related to that specific development.

Bob Estes, representing Campus Crest stated the request is to downzone from I-1 to Downtown General. The applicant held a pre-submittal meeting with members of the Ward and held a neighborhood meeting as well. Upon a rezoning request the appropriate consideration and topic for discussion is land use. A discussion of permitted uses is not permissible at a rezoning only land use considerations are permissible. The requested Downtown General zoning is compatible with the surrounding properties and is consistent with the neighborhood area land use designation that you have established. The requested zoning is consistent with the City's adopted land use plan and with the City Plan 2025. The staff supports this request and the Planning Commission recommends that you pass this ordinance.

Mr. Estes explained the details of why the applicant is requesting the rezoning. He stated traffic is a consideration.

Randy Tobin with Peters and Associates stated we were hired to do a comprehensive traffic impact study related to the development as proposed. He gave the results of that study. He stated that traffic signals were not warranted for Martin Luther King Jr., Government, School Avenue and 11th Street.

Alderman Thiel: That was based on 500 students?

Randy Tobin: Yes ma'am.

Alderman Petty: With the current zoning being Industrial what is the potential for increasing traffic if we saw a maximum impact project built there?

Jeremy Pate: Generally we don't see a great volume of traffic associated with warehousing and industrial type uses. It is usually the type of traffic. Truck related is usually what you see. We have a lot of uses in I-1. A larger tract of I-1 would be utilized more for a smaller warehousing type use especially when it is not located at the corner of a very busy intersection. My anticipation is that it would be lower than a general mixed use or retail or residential type of use.

Mayor Jordan: We are discussing the rezoning, can we talk about a development or the density of a rezoning.

City Attorney Kit Williams: It is a fair zoning consideration to look at what could be built here if you rezoned. You should not discuss a particular project even if the project has been disclosed by the applicant to the neighborhood. You can look at what kind of projects could be built including a project that would have substantial density.

Mayor Jordan: When we do public comment I want you to focus on the rezoning. You can discuss density but a particular project being singled out would not be permissible. Traffic concerns can be discussed.

City Attorney Kit Williams: They can talk about what possible projects could be built but not a particular project.

Ron Butler, representative of the Regional National Cemetery Improvement Corporation spoke in opposition to the rezoning. We are opposed to any type of commercial development in that area. He stated we would like that piece of real estate to be added to the National Cemetery.

Alderman Petty: Ron, I understand this property has been offered to your group on several occasions for sale. Do you see that you would ever have the funding necessary to expand there?

Ron Butler: You can't rule us out. It has not been offered to us, there have been discussions with the property owner but I do not know the results of that discussion were. We have been successful in the past.

Otto Keller, a member of the NWA Honor Guard spoke in opposition to the rezoning. He asked the Council to not pass the rezoning and keep the ground holy and sacrificed.

Jim Buckner, a retired Lieutenant Colonel with the U.S Army spoke in opposition to the rezoning. He stated this is sacred and holy ground to us that plan on being buried there. He expressed his reasons of opposition and asked the Council to deny the rezoning. He stated anything that would be a disturbance to that holy ground would not be permissible therefore I urge you to deny this zoning.

Alderman Lucas: Are there any Korean veterans buried there?

Jim Buckner: Yes ma'am.

Alderman Lewis: Have you all been in contact with Boozman's office. I am trying to get an idea of the efforts to expand in that area.

Jim Buckner: I talked to Steve Gray today and he has been in conversation with Congressman Boozman today. They have urged that we try our best to stave off this rezoning to give us a chance to purchase this land. There are federal resources that can be brought to bear in this and it will take a little time but I believe we can raise the money that would purchase that land.

Kathy Kisida, resident of 1227 South West Avenue confirmed the Campus Crest were the ones requesting that it be rezoned.

Jeremy Pate confirmed that was correct.

Kathy Kisida spoke in opposition of the rezoning and stated that she wanted the neighborhood to remain a single family neighborhood. She stated she did not feel the neighborhood was compatible with the proposed project. She expressed her concerns with the current zoning, with a commercial zoning and RMF-24 zoning in this neighborhood. She requested that the Council consider zoning her neighborhood and the sale barn property to Neighborhood Conservation. She stated she would like to preserve the integrity of the neighborhood.

Alderman Petty: Is Campus Crest acting on behalf of Mr. Bartholomew in this case?

City Attorney Kit Williams: Sometimes there can be an offer to purchase that is contingent upon rezoning. They are either acting as an agent for them or else they have an offer to purchase that is contingent upon the rezoning.

Robert Reed, a member of American Legion Post #100 spoke in opposition of the rezoning. He expressed his concerns with the proposed zoning.

Leonard Schulte, resident of 1235 South West Avenue spoke in opposition of the rezoning. He stated he would like to see the whole neighborhood changed to Neighborhood Conservation.

Steve Bartholomew, representative of the sale barn stated I hope the rezoning is approved. I understand the veterans have an interest in our property but there has been no contact with us on a dollar amount of this property with those people. I am here to support rezoning it.

Alderman Ferrell: I have been told that your dad offered this property knowing the cemetery might want it some day. Do you have any knowledge of that?

Steve Bartholomew: I do know that they have talked but there has not been a dollar amount. We have been there a long time.

Robert Williams, resident of 957 South Hill spoke in opposition of this rezoning. He expressed his concerns with the proposed project.

Harold Harris, a veteran spoke in opposition of the rezoning and stated we need that as a cemetery.

A representative of the American Legion Foundation spoke in opposition of the rezoning and asked for more time to get donations to buy this lot.

Wanda Peterson: I live within two blocks of the sale barn. I would like to see the rezoning put off. I would like to see the cemetery expand to this property.

Bradley Warford: I think the current City zoning is inappropriate it does not match what is in the neighborhood. I hope the City does not try to cram too much stuff in that small area.

Dustin Bartholomew: My family is selling the property. The rezoning tonight is a down zoning from Industrial to Downtown General. The things that could be built there at this time would be a lot more damaging than what is being proposed. The sale barn has been the livelihood of my family for the last 70 years and now a lot depends on this sale going through.

Scott Test, Elks lodge representative. The economic impact that this can have on this area can hurt what is already there. Think about the impact this will have on people that have been here for years.

John Compton: My dad worked long and hard to help keep the National Cemetery open. I would urge the Council to think long and hard about what they do tonight and consider the interest of the people that live there and the interest of the people who no longer live but are there and consider the interest of the people who may need that place. I sympathize with the people that own the sale barn.

A person from the audience: I would appreciate you delaying this.

Aubrey Shepherd: This is on the National Registry of Historic places, it is an amazing place and it draws people here. It is incompatible with many different possible uses. We would like to see this zoned Neighborhood Conservation. There is also another cemetery by the National Cemetery. It is called the Oak Cemetery. I hope we can save this property for the National Cemetery.

Sarah Lewis: Do you know how many people visit the National Cemetery?

Aubrey Shepherd: On Memorial Day there were over 1,000 people. They have a count at the cemetery if they stop at the headquarters.

Rob Sharp: This is certainly a very difficult issue. I would hate to have to try to make a decision on whether to rezone this property. I would hope the developer and our Planning Department would come up with some kind of standard to where a development that we could be proud of could be part of our cemetery that could celebrate the cemetery rather that turn its back on it. Maybe there could be some comprised solution that could be offered by the purchaser of the property that would make us happy with what could be built there and could also protect the neighborhood and honor the cemetery.

Alderman Thiel: I would like to leave this on the first reading. We can only consider certain things but having an over 100 year National Cemetery it is hard to not consider that in a rezoning around it. I would like to think about this and hear more from the public.

Adella Gray: I agree. It is a very serious decision and we do not want to rush it.

Sarah Lewis: I want to say thank you to folks for coming out and sharing your point of view. This is a historic area and that needs to be considered. We have a neighborhood with single family around this property. This is a down zoning but yet it would be a zoning to match a really

wrong zoning all around it. It would hardly be considered a down zoning. The whole place needs to be down zoned again.

Matthew Petty: Those that would like to see the cemetery expand there I would urge you to do everything possible over the next few weeks to contact people. To the applicant I think you realize that Fayetteville insists that projects be more unique than what you have built around the country. I would urge you to be far more creative to help this go more smoothly.

This ordinance was left on the First Reading.

Box Avenue Appeal: An ordinance rezoning that property described in rezoning petition RZN 09-3280, for approximately 1.20 acres, located at the northwest corner of Mission Boulevard and Box Avenue from R-O, Residential Office, to C-1, Neighborhood Commercial.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: The applicant has requested this be left on this reading tonight.

This ordinance was left on the First Reading.

Oakbrooke Community Appeal: Appeal the City Engineers decision to deny a request to construct a retaining wall along the public right of way on all lots within the Oakbrooke Subdivision.

Chris Brown, City Engineer gave a brief summary of the appeal. The appeal is for the location of the retaining wall.

Alderman Ferrell: Did the other utilities sign off on this?

Chris Brown: Yes. All the other utilities are located elsewhere and not in the utility easement so they had no reason to deny this.

David Jurgens, Utility Department Director: With the 18 inch to two foot high wall I can't get behind the wall to do maintenance without taking the wall down in order to do maintenance on the pipe line.

Sarah Lewis: If there is damage and the City has to fix it who pays for the wall?

David Jurgens: We can make it a condition that the property owner who owns the wall is responsible to repair the wall. The challenge that we face when dealing with property owners is if we a fixing a line that services a lot across the street but we damage another owners wall the owner whose wall was damaged is not going to be happy.

David further explained the repair process.

Alderman Thiel: I have properties in the old part of town that have retaining walls and having utilities that run behind them is an issue.

Alderman Cook: How did it get designed like this?

David Jurgens: It is not uncommon to have the utilities behind the sidewalk. This has a very small yard area and it has a steeper slope.

Jeremy Pate: The location of the water lines and sewer lines are dedicated by the design engineers. It is the private developer and their design engineer that designed the location of that. In this development the utility easement was reduced because this was a planned zoning district.

Alderman Petty: The retaining wall looks better. Will moving the building set back farther allow a retaining wall to be built on the correct side of the utility?

Jeremy Pate: No I do not believe so. There are two separate issues. What you are considering tonight is an appeal of the City Engineers decision not to grant a wall within two feet of the right of way. David Jurgens was speaking of a separate issue that the City Council is not deciding.

Tracy Hoskins, developer: We hired an engineer to bring the project through and it was approved by Planning staff and Engineering. Typically the utilities are in the right of way. The fact that we have shorter front lots has nothing to do with this. The utilities could have been located within that right of way but for some reason they were not.

Tracy explained his reason for the walls. He stated there are ways to access these utilities without tearing the walls down.

Alderman Ferrell: What is the selling price of the houses?

Tracy Hoskins: The ones that we are building now range from $190,000 to $290,000. They are 1,700 square feet to 2,500 square feet.

Alderman Lucas: Tracy you are building a house with the garage sticking out in the front? I thought you were opposed to that type of house.

Tracy Hoskins: We are not building any house with the garage on the front.

Alderman Lucas: So the picture you gave us is not of the development.

Tracy Hoskins: I am not trying to represent the house I am trying to represent the terrain.

A discussion followed on the height of the walls, the possible placement of the walls, and the approval process.

Alderman Lewis moved to deny the appeal. Alderman Thiel seconded the motion. Upon roll call the motion passed 6-2. Alderman Ferrell and Gray voting no.

This appeal was denied.

Willoughby Road Rezoning: An ordinance rezoning that property identified as Parcels 765-15560-000 and 765-15560-001, for approximately 15.2 acres, located south of Willoughby Road and 0.8 miles east of Highway 71B from I-2, General Industrial to R-A, Residential Agricultural.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief summary of the rezoning.

Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Thiel moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5249 as Recorded in the office of the City Clerk.

The meeting adjourned at 9:55 PM

Lioneld Jordan, Mayor **Sondra E. Smith, City Clerk/Treasurer**

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
July 7, 2009

A meeting of the Fayetteville City Council will be held on July 7, 2009 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Agenda Session Presentations:

1. Courts Building Progress Update – Lynn Hyke
2. Fayetteville Nutrient Reduction Plan and First Year – Chris Brown
3. American Recovery and Reinvestment Act Grant – John Coleman

Mayor's Announcements, Proclamations and Recognitions

Presentations, Reports and Discussion Items:

A. Consent:

1. Approval of the June 9, 2009 Special City Council meeting minutes and the June 16, 2009 City Council meeting minutes.
2. **U.S. Marshal's Service:** A resolution to approve a budget adjustment to recognize $25,000.00 in revenue from the U.S. Marshal's Service for police overtime costs.

3. **State and Tribal Assistance Grant (STAG):** A resolution authorizing the Mayor to apply for a State and Tribal Assistance Grant (STAG) in the amount of $286,400.00 from the U. S. Environmental Protection Agency for sanitary sewer system improvements; and designating the Mayor as the City of Fayetteville's authorized representative in all matters relating to the procurement and administration of said grant.

4. **Drake Field Insurance Reimbursement:** A resolution approving a budget adjustment recognizing the receipt of insurance reimbursement and establishing a project budget to track expenses related to the demolition, cleanup and contingency replacement of the hangar building at Drake Field that was destroyed by fire.

5. **Ice Storm 2009 Disaster:** A resolution approving budget adjustments totaling $377,291.00 to restore various operating budgets to funds and departments for cash expenses incurred in response to Ice Storm 2009 Disaster.

6. **Garver Engineers, LLC Amendment No. 4:** A resolution approving Amendment No. 4 to the contract with Garver Engineers, LLC to reduce the fee for construction phase services by $109,964.00 for Mount Comfort Road Improvements Contract 2, from Alpine Avenue to Rupple Road.

7. **Arkansas Natural Resources Commission Grant:** A resolution authorizing the Engineering Division to apply for a grant through the Arkansas Natural Resources Commission for the design and implementation of a stream bank restoration Project along a section of the White River adjacent to the Fayetteville Executive Airport.

8. **Bid # 09-07 Score American Soccer Company, Inc.:** A resolution awarding Bid # 09-07 and approving the purchase of youth soccer uniforms from Score American Soccer Company, Inc. in the amount of $27,097.00 for the Fall 2009 and Spring 2010 Season.

9. **Light Rail Transit System:** A resolution to support an alternatives analysis study to determine the feasibility of a light rail transit system in Northwest Arkansas.

10. **Wedington Drive Right-of-Way:** A resolution authorizing the donation of right-of-way along Wedington Drive containing .09 acres and being a part of parcel No. 765-13741-007, and authorizing the Mayor to execute deeds and all other necessary papers to transfer ownership of the property to the Arkansas State Highway Commission.

B. Unfinished Business:

1. **RZN 09-3271 (Sale Barn/Campus Crest LLC, 562):** An ordinance rezoning that property described in rezoning petition RZN 09-3271, for approximately 8.87 acres, located at the old Washington County Sale Barn, north and east of 11th Avenue and Government Avenue from I-1, Heavy Commercial/Light Industrial, to DG, Downtown General.

   This ordinance was left on the First Reading at the June 16, 2009 City Council meeting.

2. **Box Avenue Appeal:** An ordinance rezoning that property described in rezoning petition RZN 09-3280, for approximately 1.20 acres, located at the northwest corner of Mission Boulevard and Box Avenue from R-O, Residential Office, to C-1, Neighborhood Commercial.

   This ordinance was left on the First Reading at the June 16, 2009 City Council meeting.

C. New Business:

1. **ADM 09-3307 (Sustainable Yards):** An ordinance to amend §95.01 Unsightly or Unsanitary Conditions on Real Property; Order and Notice To Correct of the Fayetteville Code to encourage properly maintained and managed naturalistic landscapes.

Agenda Additions:

Announcements:

1. **City Council Tour: July 6, 2009**

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

City of Fayetteville Staff Review Form

City Council Agenda Items and Contracts, Leases or Agreements

7/7/2009
City Council Meeting Date
Agenda Items Only

G Tabor	Patrol	Police
Submitted By	**Division**	**Department**

Action Required:

Approval of a budget adjustment to accept reimbursement of detective overtime expenses from the U. S. Marshal Service for investigative operations in the amount of $25,000.00.

$ -	$ -	Police - US Marshal Service
Cost of this request	Category / Project Budget	Program Category / Project Name
1010-2920-5120.00	$ -	Reimbursement
Account Number	Funds Used to Date	Program / Project Category Name
09020-2009	$ -	General
Project Number	Remaining Balance	Fund Name

Budgeted Item [ ] **Budget Adjustment Attached** [X]

Department Director — 6-5-09 Date

City Attorney — 6-5-09 Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Finance and Internal Services Director — 6-8-2009 Date

Chief of Staff — 6-8-09 Date

Mayor — 6/8/09 Date

Received in City Clerk's Office — ENTERED 6/5/09

Received in Mayor's Office — ENTERED 6/5/09

Comments:

Fayetteville
ARKANSAS

Fayetteville Police Department
100-A West Rock
Fayetteville, AR 72701
Telephone: (479) 587-3555
Fax: (479) 587-3563

Departmental Correspondence

To: Mayor Lioneld Jordan and Members of the City Council

From: Greg Tabor, Police Chief

Date: June 8, 2009

Re: **Approval of a Budget Adjustment for Reimbursement of Expenses from the U. S. Marshal Service**

Background

In October 2007, the Fayetteville Police Department joined nine other agencies including the U.S. Marshals Service to form the Northwest Arkansas Sex Offender and Violent Crime Task Force. We assigned one full time investigator and one part time investigator to participate in task force investigations. There is another task force working with the U.S. Marshal Service Western District, the River Valley Task Force in Fort Smith. As a result of the task force's activities, U.S. Marshal Richard O'Connell has asset forfeiture funds to distribute to the local task forces and local agencies. Mr. O'Connell also has federal funds that are meant to support local agencies.

Discussion

In May 2009, the U. S. Marshal Service released $25,000 of these funds for the Fayetteville Police Department to seek reimbursement for Fayetteville Police Department investigators' overtime spent investigating crime. The Fayetteville Police Department Criminal Investigations Division has fourteen investigators, including two sergeants, who regularly investigate major crimes. We are seeking reimbursement for their overtime on investigations.

When we seek reimbursement, our investigators complete a one page JDIS form, a statistical sheet that explains if an arrest was made or a warrant was requested. The task force compiles those statistics.

Recommendation

Staff recommends acceptance of these reimbursement funds and approval of a budget adjustment in the amount of $25,000.

Budget Impact

None. This is a reimbursement of expenses incurred.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT TO RECOGNIZE $25,000.00 IN REVENUE FROM THE U.S. MARSHAL'S SERVICE FOR POLICE OVERTIME COSTS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment to recognize $25,000.00 in revenue from the U.S. Marshal's Service for police overtime costs.

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Police Division: Police Program: Police/Animal Projects	Date Requested	Adjustment Number
2009		6/8/2009	

Project or Item Added/Increased:	Project or Item Deleted/Reduced:
Personnel Services - Contra	Misc Revenue - Police Department

Justification of this Increase:	Justification of this Decrease:
Investigative operations in support of the U. S. Marshal Service	Reimbursement of detective overtime expenses from the U. S. Marshal Service for investigative operations.

Increase Budget

Account Name	Account Number				Amount	Project Number	
Personnel Services - Contra	1010	2920	5120	00	25,000	09020	2009

Decrease Budget

Account Name	Account Number				Amount	Project Number	
Miscellaneous Revenue - Police Departmer	1010	0001	4996	00	25,000	09020	2009

V.090403

Division Head		Date
Budget Director	6-8-09	Date
Department Director	6-5-09	Date
Finance Director	6-8-2009	Date
Chief of Staff		Date

Budget & Research Use Only

Type: A B C (D) E

Requested By

General Ledger Date

Posted to General Ledger — Initial — Date

From: Jamie Fields
To: wnewman
Date: 5/12/2009 1:50 PM
Subject: Fwd: FW: Fayetteville P.D. MOU
Attachments: MOUMAST.doc.rtf; MOUINVIOCESAMPLE.doc

>>> "Allen, Dewaine (USMS)" <Dewaine.Allen@usdoj.gov> 4/29/2009 12:10 PM >>>
Lieutenant,

Great news...see below. I got you $25,000 overtime money from the USMS. I'll need the MOU's signed as per instructions below. The invoicing your agency sends the USMS in Fort Smith is very important. I'm happy to answer any questions you have.

When you get the MOU's signed, give me a call and I'll stop by. Essentially, you have your detectives work OT, bill the USMS for that OT, and when a case is closed, your detective sends the Task Force a JDIS form with copy of warrant or PC so we can get credit for the arrest, hence more money next FY. I'll explain more about he JDIS forms, etc...a bit later.

We need to spend this money by end of FY 09...last day of October, 2009.

Let me know if you have any questions. I'm close on getting you what you need to buy the 14 computers we discussed.

Thanks again.

B. Dewaine Allen, CIDUSM
US Marshals Service, W/AR
35 East Mountain Street, #516
Fayetteville, Arkansas 72701
Cell: 479-466-4992
Office: 479-442-6141
Fax: 479-443-1674

-----Original Message-----
From: Moody, Steve (USMS)
Sent: Tuesday, April 28, 2009 5:00 PM
To: Allen, Dewaine (USMS)
Cc: Woodfin, Jeff (USMS)
Subject: Fayetteville P.D. MOU

Dewaine: Attached is the MOU for OT. Please make 2 copies and have Jamie sign BOTH. Then send them both to me. Once Chief Woodfin signs both, I'll return an original to you (for the P.D.) and keep one here for our MOU file. Tell them the maximum amount for now is $25K. We have to ensure they are spending appropriately before we can relinquish a huge chunk like $50K, but it is certainly possible, but for now $25K. Also attached are the invoicing instructions - if the invoices aren't proper I will return them for correction. Hopefully Thanks - let me know if you have questions. R/Steve

<<MOUMAST.doc.rtf>> <<MOUINVIOCESAMPLE.doc>>

Steven Moody
AO, Western Arkansas
(479) 783-5215

City of Fayetteville Staff Review Form

City Council Agenda Items and Contracts, Leases or Agreements

7/7/2009
City Council Meeting Date
Agenda Items Only

David Jurgens	Utilities	Water/Wastewater
Submitted By	**Division**	**Department**

Action Required:

Resolution authorizing the Mayor to apply for a State and Tribal Assistance Grant (STAG) Program Application in the amount of approximately $286,400 from the US Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's Authorized Representative in all matters relating to the procurement and administration of said grant.

	$ -	Sanitary Sewer Rehabilitation
Cost of this request	Category / Project Budget	Program Category / Project Name
5400.5700.5815.00	$ -	Sewer Main Construction
Account Number	Funds Used to Date	Program / Project Category Name
02017	$ -	Water/Sewer
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐ **Budget Adjustment Attached** ☐

D Jurgens	17 Jun 09	Previous Ordinance or Resolution #	N/A
Department Director	Date		
		Original Contract Date:	N/A
D. J. White	6/24/09	Original Contract Number:	N/A
City Attorney	Date		
Marsha Hertzog	6/24/09	Received in City Clerk's Office	ENTERED 6/24/09
Finance and Internal Services Director	Date		
	6/24/09	Received in Mayor's Office	ENTERED 6/24/09
Chief of Staff	Date		
Lioneld Jordan	6/24/09		
Mayor	Date		

Comments:

Fayetteville
ARKANSAS

City Council Meeting of July 7, 2009

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director
Water and Sewer Committee

Date: June 17, 2009

Subject: Resolution authorizing the Mayor to submit a State and Tribal Assistance Grant Application for approximately $286,400 from the USEPA for sanitary sewer rehabilitation; designating the Mayor as the City's Authorized Representative in all matters relating to the procurement and administration of said grant.

RECOMMENDATION

Fayetteville City Administration recommends approval of a resolution authorizing the Mayor to submit a State and Tribal Assistance Grant (STAG) Program Application in the amount of approximately $286,400 from the US Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's Authorized Representative in all matters relating to the procurement and administration of said grant.

BACKGROUND

Fayetteville has been informally notified by Arkansas Natural Resources Commission that it will be the recipient of approximately $286,400 in USEPA Grant Assistance from the STAG Program for 2009. This is the sixth of seven years that the City has received similar grants. This EPA grant funding was requested for sanitary sewer rehabilitation and is proposed to be merged into the City's ongoing sewer rehabilitation funding to accelerate the program. The EPA grant provides a maximum of 55% of the costs, with the remaining 45% ($234,328) being the required local match.

DISCUSSION

The exact grant amount will not be known until formal notification is received. As we expect to have less than two weeks between notification and the submission deadline we are requesting this resolution in advance. A sanitary sewer evaluation study (SSES) was completed in 2009 in the southern portions of Fayetteville and in Greenland. It is anticipated that these grant funds will be used for the rehabilitation design and construction based on the results of the 2009 SSES.

BUDGET IMPACT

Sanitary sewer rehabilitation is a budgeted project. The 2009 EPA Grant proceeds will be combined with the City's budgeted funds. A budget adjustment recognizing the grant revenue will be processed when the actual grant approval is received.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR A STATE AND TRIBAL ASSISTANCE GRANT (STAG) IN THE AMOUNT OF $286,400.00 FROM THE U. S. ENVIRONMENTAL PROTECTION AGENCY FOR SANITARY SEWER SYSTEM IMPROVEMENTS; AND DESIGNATING THE MAYOR AS THE CITY OF FAYETTEVILLE'S AUTHORIZED REPRESENTATIVE IN ALL MATTERS RELATING TO THE PROCUREMENT AND ADMINISTRATION OF SAID GRANT.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to apply for a State and Tribal Assistance Grant (STAG) in the amount of $286,400.00 from the U. S. Environmental Protection Agency for sanitary sewer system improvements.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves designates the Mayor as the City of Fayetteville's authorized representative in all matters relating to the procurement and administration of said grant.

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

City of Fayetteville Staff Review Form

City Council Agenda Items and Contracts, Leases or Agreements

7/7/2009
City Council Meeting Date
Agenda Items Only

Ray M. Boudreaux	Aviation	Transportation
Submitted By	**Division**	**Department**

Action Required:

Approve a Budget Adjustment recognizing receipt of Insurance reimbursement and to establish a Project Budget to track expenses related to the demolition, cleanup and contingency replacement of the Hangar building, 4240 S. School, that was destroyed by fire. Contact: Ray Boudreaux, extension 642.

$ 350,870.00	$ -	Hangar Fire - Airport
Cost of this request	Category / Project Budget	Program Category / Project Name
5550.3960.5804.00	$ -	Airport Capital Exp
Account Number	Funds Used to Date	Program / Project Category Name
09021 1	$ -	Airport
Project Number	Remaining Balance	Fund Name

Budgeted Item [ ] **Budget Adjustment Attached** [X]

Department Director — 6-17-09 Date

City Attorney — 6/24/09 Date

Finance and Internal Services Director — 6/24/09 Date

Chief of Staff — 6/24/15 Date

Mayor — 6/24/09 Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Received in City Clerk's Office — ENTERED 6/25/09

Received in Mayor's Office — ENTERED 6/24/09

Comments:

Revised January 15, 2009

Fayetteville
ARKANSAS

AVIATION DIVISION
FAYETTEVILLE EXECUTIVE AIRPORT • DRAKE FIELD

CITY COUNCIL AGENDA MEMO/STAFF CONTRACT REVIEW MEMO

TO: Mayor Jordan

THRU: Chief of Staff

THRU: Staff/Contract Review Committee

THRU: Terry Gulley, Transportation Director

FROM: Ray M. Boudreaux, Aviation Director

DATE: June 19, 2009

SUBJECT: **Approve a Budget Adjustment to recognize the revenue received from insurance proceeds from the fire at Fayetteville Executive Airport, Drake Field and to establish a project budget to pay for cleanup, fencing and the eventual replacement of the hangar. Signature of the Mayor.**

RECOMMENDATION: Approve a project budget to pay for the cleanup, security fencing and the potential replacement of the hangar destroyed by fire at the Fayetteville Executive Airport, Drake Field. This new budget must be established by the City Council to allow for these and other associated expenses caused by the fire. Signature of the Mayor.

BACKGROUND: $350,870.00 was received from Traveler's Insurance Company following the complete destruction of the hangar at the airport. The insurance proceeds paid were the present value of the building plus the cost of temporary fencing to secure the site pending cleanup, and cleanup of the site. This budget is necessary to reserve the funds for the eventual replacement of the building and to pay for these additional expenses not budgeted in the approved airport budget.

BUDGET IMPACT: This item establishes a new budget with the insurance proceeds received from the destroyed hangar at the airport. Immediate purchases against this new budget will be cleanup of the site ($8,000.00), temporary fencing ($2,870.00) and security fencing to close the gap between the remaining hangars (approximately $2,500.00). The remainder will remain in the budget for the potential replacement hangar.

Attachments: Staff Review
Budget Adjustment

RESOLUTION NO. _____

A RESOLUTION APPROVING A BUDGET ADJUSTMENT RECOGNIZING THE RECEIPT OF INSURANCE REIMBURSEMENT AND ESTABLISHING A PROJECT BUDGET TO TRACK EXPENSES RELATED TO THE DEMOLITION, CLEANUP AND CONTINGENCY REPLACEMENT OF THE HANGAR BUILDING AT DRAKE FIELD, THAT WAS DESTROYED BY FIRE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment recognizing the receipt of insurance reimbursement and establishing a project budget to track expenses related to the demolition, cleanup and contingency replacement of the hangar building at Drake Field, that was destroyed by fire.

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED: ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: General Government Division: Aviation & Economic Development Program: Airport Capital Expense	Date Requested	Adjustment Number
2009		7/7/2009	

Project or Item Added/Increased:
$350,870 in the Building Costs account

Project or Item Deleted/Reduced:
None. Recognize revenue received from Travelers insurance company.

Justification of this Increase:
Will allocate a project budget necessary for expenses associated with the demolition and cleanup of the site debris. The remaining budget will be reserved and tracked for the future disposition of the building/site.

Justification of this Decrease:
Insurance Company paid the full policy limit on the destroyed hangar.

Increase Budget

Account Name	Account Number				Amount	Project Number	
Building Costs	5550	3960	5804	00	350,870	09021	1

Decrease Budget

Account Name	Account Number				Amount	Project Number	
Gain/loss sale of assets	5550	0955	6881	02	350,870	09021	1

Division Head — Date: 6/17/09

Budget Director — Date:

Department Director — Date: 6-17-09

Finance Director — Date: 6/24/09

Chief of Staff — Date: 6/24/09

Lioneld Jordan / Mayor — 6/24/09

V.090403

Budget & Research Use Only

Type: A B C D E

Requested By

General Ledger Date

Posted to General Ledger — Initial — Date

THE TRAVELERS - HO MAJOR CASE - PRO
MSO6A B MARKOWITZ
1 TOWER SQ
HARTFORD CT 06183

UA01587

891A **78900061**

RECEIVED
MAY 18 2009
AIRPORT

TRAVELERS

DATE: 05/14/09
LOSS DATE: 04/18/09
FILE NUMBER: 877 FR A5N4315 R

CITY OF FAYETTEVILLE ATTN: RAY
BOUDREAUX
4500 S. SCHOOL RD
FAYETTEVILLE AR 72701

AGENT:
REGIONS INSURANCE INC

ACCOUNT NAME:
CITY OF FAYETTEVILLE

THE TRAVELERS INDEMNITY COMPANY

EXPLANATION OF PAYMENT

BUILDING	$350870.00
TOTAL PAID	$350870.00

RECEIVED
MAY 18 2009
Airport

POLICY LIMITS ON HANG ER PLUS FENCE COST

FOR ADDITIONAL INFORMATION, CONTACT: TIMOTHY ROMERO AT (913)402-9415

)4001649
— DETACH CHECK

UNSUMM -021
OVRPUNS2-121
DETACH CHECK

Citibank, N.A.
One Penns Way
New Castle DE 19720

TRAVELERS
1 TOWER SQ
HARTFORD CT 06183
(913)402-9415

891A **78900061**
THIS CHECK HAS A RED BACKGROUND

DATE	ACCOUNT NUMBER	FILE NUMBER
05/14/09	J99	877 FR A5N4315 R

VOID IF NOT PRESENTED WITHI
ONE YEAR AFTER DATE OF ISSU

THREE HUNDRED FIFTY THOUSAND EIGHT HUNDRED SEVENTY AND 00/100 ---------- **PAY:** $**350,870.00

PAY TO THE ORDER OF CITY OF FAYETTEVILLE
113 W MOUNTAIN ST
FAYETTEVILLE AR 72701

001951
UA01587

Douglas K. Russell
AUTHORIZED SIGNATURE

City of Fayetteville Staff Review Form

City Council Agenda Items and Contracts, Leases or Agreements

July 7,2009
City Council Meeting Date
Agenda Items Only

Paul A. Becker	Finance	Finance & Internal Service
Submitted By	**Division**	**Department**

Action Required:

This is an appropriation request to restore various operating budgets for cash expenses incurred during the ice storm which occurred in January of 2009.Amounts restored have been 75%reimbursed by FEMA.The City portion is 12.5% of the cost.The State's portion is also 12.5% of the cost, which will be reimbursed at the end of the program.The request is to approve the attached budget adjustments for various funds and departments as identified on the attached transfer form in the total amount of $377,291.

$377,291	$ -	
Cost of this request	Category / Project Budget	Program Category / Project Name
Various per the attached B/A's	$ -	
Account Number	Funds Used to Date	Program / Project Category Name
	$ -	
Project Number	Remaining Balance	Fund Name

Budgeted Item [ ] **Budget Adjustment Attached** [x]

Paul a. Becker — 06-18-2009
Department Director — Date

D. J. White — 6/24/09
City Attorney — Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Paul a. Becker — 06-18-2009
Finance and Internal Services Director — Date

Received in City Clerk's Office — ENTERED 6/18/09 AD

Chief of Staff — 6/24/09
Date

Received in Mayor's Office — ENTERED 6/24/09 PK

Mayor — 6/24/09
Date

Comments:

Fayetteville
ARKANSAS

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: **Mayor Lioneld Jordan and Fayetteville City Council**

From: **Paul A Becker, Finance Director**

Date: **June 17, 2009**

Subject: **Resolution by the City of Fayetteville to approve a budget adjustment to restore funding to certain programs for cash expenses incurred during the 2009 Ice Storm.**

Recommendation

Staff recommends approval of a resolution requesting the attached budget adjustments

Discussion

As we are all well aware, a powerful ice storm struck the City in January of 2009. The City sustained an enormous amount of damage and this incident was declared a national disaster by the President. During the disaster as City personnel responded immediate costs were incurred . These expenses were funded through the use of the operating budgets of various fund programs of the City. Departmental budgets affected included Transportation, Water & Sewer, Parks, Police, Fire and Solid Waste.
Since the declaration of a national disaster, the City has been working with FEMA to obtain partial reimbursement of costs incurred. The basic cost apportionment is FEMA 75 %. The State will reimburse 12.5% and the City share is 12.5 %. So far the City has received reimbursement of approximately $1.2 million of the eligible costs from FEMA (total eligible costs from FEMA will be approximately $4.2 million).
At this time it is necessary to begin to restore certain operating budgets to insure the continuance of normal operations. The attached budget adjustments accomplish this by restoring the operating budgets affected by ice storm cash costs.

Budget Impact

The impact of this resolution is to transfer $377,291 from the Emergency and Disaster Replacement Fund to the operating funds as follows:

Street Fund -	$164,384
Water & Sewer Fund	$ 90,016
Park Development Fund	$ 22,328
General Fund	$ 64,842
Solid Waste	$ 35,721

RESOLUTION NO. _____

A RESOLUTION APPROVING BUDGET ADJUSTMENTS TOTALING $377,291.00 TO RESTORE VARIOUS OPERATING BUDGETS TO FUNDS AND DEPARTMENTS FOR CASH EXPENSES INCURRED IN RESPONSE TO ICE STORM 2009 DISASTER.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment totaling $377,291.00 to restore various operating budgets to funds and departments for cash expenses incurred in response to Ice Storm 2009 Disaster.

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Citywide Division: Citywide Program: Ice Storm 2009 - FEMA	Date Requested	Adjustment Number
2009		6/18/2009	

Project or Item Added/Increased:
$377,291 in various funding sources Citywide.

Project or Item Deleted/Reduced:
None. To recognize a transfer of funds from the Replacement Fund.

Justification of this Increase:
The funding is needed to cover additional expenses associated with the 2009 Ice Storm.

Justification of this Decrease:
The funding transferred is FEMA reimbursements received due to the 2009 Ice Storm.

Increase Budget

Account Name	Account Number	Amount	Project Number

Decrease Budget

Account Name	Account Number	Amount	Project Number

V.090403

Division Head		Date
Budget Director	6-18-09	Date
Department Director		Date
Finance Director	6-18-09	Date
Chief of Staff	6/24/09	Date
Mayor	6/24/09	Date

Budget & Research Use Only

Type: A B C D E

Requested By

General Ledger Date

Posted to General Ledger — Initial — Date

Posted to Project Accounting — Initial — Date

Budget Adjustment Detail Backup

Account Name	Account Number	Increase Budget	Decrease Budget	Project#	Sub#	Project Description
Transfer from Replacement	1010.0001.6602.27		37,441	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Minor Equipment	1010.5260.5210.00	5,647		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Safety Devices	1010.5260.5217.00	3,795		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Building & Grounds Maintenance	1010.5260.5400.00	6,177		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Small Equipment Maint	1010.5260.5407.00	309		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	1010.5210.5120.00	466		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	1010.5220.5120.00	82		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	1010.5250.5120.00	233		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	1010.5260.5120.00	20,732		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	2250.0925.6602.27		22,222	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	2250.9250.5120.00	22,222		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	2100.0910.6602.27		157,944	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	2100.4110.5120.00	28,705		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	2100.4120.5120.00	44,930		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	2100.4130.5120.00	14,977		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	2100.5315.5120.00	13,729		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	2100.5530.5120.00	22,465		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Office Supplies/Printing	2100.4100.5200.00	983		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Safety Devices	2100.4100.5217.00	1,929		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Motorpool Allowance	2100.4100.5331.04	334		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Contract Services	2100.4100.5315.00	72		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Chemicals	2100.4120.5204.00	11385		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Minor Equipment	2100.4120.5210.00	10,363		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Signs	2100.4120.5212.00	8072		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	1010.0001.6602.27		5,953	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	1010.2940.5120.00	5,953		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	1010.0001.6602.27		5,486	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Vehicle & Machine Maint	1010.3020.5403.00	5486		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	5500.0950.6602.27		29,298	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	5500.5070.5120.00	29,298		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	5400.0940.6602.27		85,118	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	5400.4410.5120.00	11,728		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	5400.4310.5120.00	11,729		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Pcp Operation Contract	5400.5100.5328.00	61,661		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	1010.0001.6602.27		600	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Veterinary Supplies	1010.2730.5200.03	600		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	1010.0001.6602.27		427	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Replacement Charges	1010.5260.5331.01	427		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	2250.0925.6602.27		106	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Replacement Charges	2250.9250.5331.01	106		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	2100.0910.6602.27		6,440	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Replacement Charges	2100.4130.5331.01	1,590		09009	1	ICE 1-09 (2009 Ice Storm Damage)

Budget Adjustment Detail Backup

Account Name	Account Number	Increase Budget	Decrease Budget	Project#	Sub#	Project Description
Replacement Charges	2100.4120.5331.01	3,251		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Replacement Charges	2100.5520.5331.01	1,599		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	5500.0950.6602.27		6,423	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Replacement Charges	5500.5070.5331.01	4,304		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Replacement Charges	5500.5030.5331.01	2,119		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	5400.0940.6602.27		4,898	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Replacement Charges	5400.4410.5331.01	2,217		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Replacement Charges	5400.4310.5331.01	2,447		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Replacement Charges	5400.5110.5331.01	55		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Replacement Charges	5400.5620.5331.01	179		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Transfer from Replacement	1010.0001.6602.27		14,935	09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	1010.3010.5120.00	2,082		09009	1	ICE 1-09 (2009 Ice Storm Damage)
Personnel Services - Contra	1010.3020.5120.00	12,853		09009	1	ICE 1-09 (2009 Ice Storm Damage)
		377,291	377,291			

Budget Adjustment Detail Backup

Account Name	Account Number	Increase Budget	Decrease Budget	Project#	Sub#	Project Description

BUDGET ADJUSTMENT SUMMARY BY FUND

Funding Source Summary	Fund#	Increase	Decrease	Difference
General	1010	64,842	64,842	-
Street	2100	164,384	164,384	-
Parks Development	2250	22,328	22,328	-
Water & Sewer	5400	90,016	90,016	-
Solid Waste	5500	35,721	35,721	-
		377,291	377,291	-
Detail Vs. Summary		-	-	

City of Fayetteville Staff Review Form

City Council Agenda Items and Contracts, Leases or Agreements

7/7/2009
City Council Meeting Date
Agenda Items Only

Chris Brown CB	Engineering	Development Services
Submitted By	Division	Department

Action Required:

A resolution authorizing execution of Amendment No. 4 to the Engineering Contract with Garver, LLC to reduce the fee for construction phase services by $109,964 for Mount Comfort Road, Contract 2, from Alpine Avenue to Rupple Road.

$ (109,964.00)	$ 24,581,590.00	Transportation Bond Improvements
Cost of this request	Category / Project Budget	Program Category / Project Name
4520.9520.5314.00	$ 15,697,426.00	Professional Services
Account Number	Funds Used to Date	Program / Project Category Name
06035.1500	$ 8,884,164.00	2006A Sales Tax Construction
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐ **Budget Adjustment Attached** ☐

Department Director	06.18.2009 Date	Previous Ordinance or Resolution #	154-06
City Attorney	6/24/09 Date	Original Contract Date:	9/19/2006
Finance and Internal Services Director	6/24/09 Date	Original Contract Number:	1051
Chief of Staff	6/24/09 Date		
Mayor	6/24/09 Date		

Received in City Clerk's Office — ENTERED 10:19/09 AM

Received in Mayor's Office — ENTERED 6/24/09 PM

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director

From: Chris Brown, City Engineer

Date: June 18, 2009

Subject: **A resolution authorizing execution of Amendment No. 4 to the Engineering Contract with Garver, LLC to reduce the fee for construction phase services by $109,964 for Mount Comfort Road, Contract 2, from Alpine Avenue to Rupple Road.**

RECOMMENDATION:

Staff recommends approval of a resolution authorizing execution of Amendment No. 4 to the Engineering Contract with Garver, LLC to reduce the fee for construction phase services for Mount Comfort Road, Contract 2, from Alpine Avenue to Rupple Road by $109,964. The fee for construction phase services will be reduced from $240,000 to $130,036.

BACKGROUND:

Mount Comfort Road Improvements are a part of the Transportation Improvement Bond Program. The project includes major intersection improvements at the I540/Shiloh Drive Intersection, relocation of Shiloh Drive to the west, signalization of 4 intersections along Mount Comfort, and widening of Mount Comfort to 4 lanes from I-540 to Rupple Road.

Under the original contract, and Contract Amendment No. 1, Garver provided traffic studies, design surveys and preliminary and final design services for Mount Comfort Road, from I-540 to west of Rupple Road. Contract Amendment No. 2 was executed for construction phase services for the first construction contract, and Contract Amendment No. 3 was for construction phase services for the second construction contract.

DISCUSSION:

The City has five Public Works Inspectors on staff. In the past, these inspectors have primarily focused on inspections of private developments. Due to the volume of private development, the inspectors were generally not used for City projects designed by consultants; instead, the design consultant provided construction observation services as part of their contract. However, since development has slowed, staff is available to provide construction observation for more City projects.

The proposed contract amendment will reduce the construction phase fees paid to Garver by $109,964 by removing the construction observation fee from the contract. The

construction observation that Garver was to provide will instead be provided by City staff.

The effect of this amendment is twofold. First, for the same cost to the Bond Program, City Staff can provide more inspection due to the lower hourly rates of staff relative to the rates charged by Garver. Second, since staff time spent on the project will be charged to the Bond Program, the General Fund will realize a savings estimated at $34,000 in 2009 and $68,000 in 2010.

BUDGET IMPACT:

This contract amendment will have minimal effect on the Transportation Bond Program. A small savings to the program may be realized. The General Fund will realize a savings estimated to be $102,000.

AMENDMENT TO AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES CITY OF FAYETTEVILLE FAYETTEVILLE, ARKANSAS

CONTRACT AMENDMENT NO. 4 – CONSTRUCTION PHASE SERVICES

Mt. Comfort Road Improvements – (Construction Contract No. 2) Rupple Road to Alpine Avenue

This Contract Amendment No. 4, dated _____, 2009 shall amend the original contract between the CITY OF FAYETTEVLLE (Fayetteville, Arkansas) and GARVER ENGINEERS, LLC (GARVER), dated September 19, 2006 for proposed improvements to Mt. Comfort Road from Interstate 540 to Rupple Road, referred to in the following paragraphs as the original contract. Previously executed, Contract Amendment No. 1 added professional engineering and survey services for Design and Bidding Phase Services of Construction Contract No. 1 and for Design Phase Services for Construction Contract No. 2. Previously executed, Contract Amendment No. 2 added professional engineering and surveying services for the Construction Phase Services of Construction Contract No. 1. Previously executed Contract Amendment No. 3 added professional engineering and surveying services for the Bidding Services and Construction Phase Services of Construction Contract No. 2. This Contract Amendment No. 4 decreases the tasks included in the Construction Phase Services Contract, as described herein.

The original contract is hereby modified as follows:

SECTION 6 – PAYMENT TO GARVER

6.1 Compensation

Replace "not to exceed $1,508,075" with "not to exceed $1,398,112".

6.1.7 Construction Phase Services

Replace "shall pay GARVER an amount estimated to be $240,000" with "shall pay GARVER an amount estimated to be $130,036."

APPENDIX A

2.12 Construction Phase Services

Delete the following tasks:

1. Review the Contractor's progress payment requests based on the actual quantities of contract items completed and accepted, and will make a recommendation to the CITY OF FAYETTEVILLE regarding payment.
2. Attend progress/coordination meetings with CITY OF FAYETTEVILLE/Contractor.
3. Provide coordination with a construction materials testing firm.
4. Maintain a set of working drawings and prepare and furnish record drawings.
5. Provide part-time resident construction observation services for the 360-calendar-day construction contract performance time. The proposed fee is based on approximately **4 hours per day**, 5 days per week, during the 360-calendar-day construction contract performance time. If the construction time extends beyond the time established in this agreement or if the CITY OF FAYETTEVILLE wishes to increase the time or frequency of the observation, the CITY OF FAYETTEVILLE will pay GARVER ENGINEERS an additional fee agreed to by the CITY OF FAYETTEVILLE and GARVER ENGINEERS.
6. Prepare punch list, review final project closing documents, and submit final pay request.

Delete the following construction observation services:

1. Coordinate with the firm providing construction materials quality assurance testing under separate contract with the CITY OF FAYETTEVILLE.
2. Maintain a file of quantities incorporated into the work, test reports, certifications, shop drawings and submittals, and other appropriate information.
3. Maintain a project diary which will contain information pertinent to each site visit including date and weather conditions, names of important visitors, construction work in progress and location, size of Contractor's work force and equipment in use, number of hours worked by Contractor's forces, and substance of important conversations with the Contractor. Engineer will provide copies to CITY OF FAYETTEVILLE weekly.

APPENDIX A-2 – Fee Summary

Fee summary is replaced in its entirety with the attached Fee Summary.

IN TESTIMONY OF WHICH, this instrument has been executed on behalf of GARVER ENGINEERS, and has been executed on behalf of the CITY OF FAYETTEVILLE, in three (3) counterparts, each of equal force, on the day and year first above written.

CITY OF FAYETTEVILLE

By: _____
Lioneld Jordan

Title: Mayor

ATTEST: _____

GARVER ENGINEERS, LLC

By: _____
Brock Hoskins

Title: Sr. Vice President

ATTEST: _____

APPENDIX A-2

CITY OF FAYETTEVILLE
MOUNT COMFORT ROAD IMPROVEMENTS

FEE SUMMARY

	Original Contract	Amendment No. 1	Amendment No. 2	Amendment No. 3	Amendment No. 4	Total
Traffic Studies	$29,080	$0	$0	$0	$0	$29,080
Schematic Study	$49,500	$0	$0	$0	$0	$49,500
Signalization Design	$0	$37,500	$0	$0	$0	$37,500
Surveys - Design	$97,100	$0	$0	$0	$0	$97,100
Surveys - Property	$0	$42,300	$0	$0	$0	$42,300
Drainage Study	$0	$0	$0	$0	$0	$0
Environmental Handling and Documentation	$0	$0	$0	$0	$0	$0
Conceptual Design	$104,020	$0	$0	$0	$0	$104,020
Preliminary Design	$0	$260,300	$0	$0	$0	$260,300
Final Design	$0	$261,800	$0	$0	$0	$261,800
Property Acquisition Documents	$0	$100,950	$0	$0	$0	$100,950
Contractor Procurement Assistance Services	$0	$14,000	$0	$0	$0	$14,000
Construction Phase Services - Contract No. 1	$0	$0	$217,587	$0	$0	$217,587
Bidding Services - Contract No. 2	$0	$0	$0	$13,588	$0	$13,588
Construction Phase Services - Contract No. 2	$0	$0	$0	$240,000	-$109,964	$130,036
Subtotal NTE Fee	**$279,700**	**$716,850**	**$217,587**	**$253,588**	**$ (109,964)**	**$1,357,762**
Subcontracted Services						
Geotechnical Services	$22,750	$0	$0	$0	$0	$22,750
Record Research	$0	$0	$0	$0	$0	$0
ARKUPS - Utility Locates	$17,600	$0	$0	$0	$0	$17,600
Estimated Subcontract Fees	**$40,350**	**$0**	**$0**	**$0**	**$0**	**$40,350**
Total NTE Fee	**$320,050**	**$716,850**	**$217,587**	**$253,588**	**$ (109,964)**	**$1,398,112**

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

July 7, 2009
City Council Meeting Date

Chris Brown	Engineering	Development Services
Submitted By	Division	Department

Action Required:

Resolution to apply for a grant through the Arkansas Natural Resources Commision for design and implementation of a stream bank restoration project for a section of the West Fork of the White River adjacent to the Fayetteville Muncipal Airport.

$ 247,680.00	$ 659,066.00	Drainage Study/Phase II Stormwater Mgmt
Cost of this request	Category / Project Budget	Program Category / Project Name
4470.9470.5817.00	$ 114,104.88	Bridge & Drainage Improvements
Account Number	Funds Used to Date	Program / Project Category Name
02097	$ 544,961.12	Sales Tax Capital Improvement
Project Number	Remaining Balance	Fund Name

Budgeted Item [X] Budget Adjustment Attached [ ]

Department Director	06.19.09 Date	Previous Ordinance or Resolution #
City Attorney	6/24/09 Date	Original Contract Date:
Finance and Internal Service Director	6/24/09 Date	Original Contract Number:
Chief of Staff	6/24/09 Date	Received in City Clerk's Office ENTERED 6/19
Mayor	6/24/09 Date	Received in Mayor's Office ENTERED 6/24/09

Comments:

Fayetteville
ARKANSAS

City Council Meeting of July 7, 2009

CITY COUNCIL AGENDA

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
Chris Brown, City Engineer

From: Sarah Wrede, Staff Engineer

Date: June 17, 2009

Subject: A resolution to apply for a grant through the Arkansas Natural Resources Commision for design and implementation of a stream bank restoration project for a section of the West Fork of the White River adjacent to the Fayetteville Muncipal Airport.

RECOMMENDATION

Staff recommends approval of a resolution to apply for a grant through the Arkansas Natural Resources Commision, ANRC, in a proposed partnership agreement with the Watershed Conservation Resource Center at a cost to the City of $247,680 over two years. The grant is for design and implementation of a stream bank restoration project for a section of the West Fork of the White River, WFWR, adjacent to the Fayetteville Execute Airport.

BACKGROUND

This project is recommended by the Nutrient Reduction Plan that the City completed based on the 2006 Agreement between the City and Beaver Water District. It is part of a suite of projects with the purpose of reducing non-point source loading of phosphorus to the Beaver Lake Watershed. The projects were evaluated by a Stakeholder Review Group consisting of representatives from a wide range of groups including the City, Beaver Water District, the University of Arkansas, Washington County, environmental groups, and citizens during the development of the Nutrient Reduction Plan.

The Watershed Conservation Resource Center, WCRC, will be the contracting authority. The WCRC is a non-profit organization that strives to protect, conserve, and restore natural resources by utilizing the watershed approach, environmental outreach, and providing planning and technical assistance to landowners, communities, and government. The principals of the WCRC are Sandi J. Formica and Matthew A. Van Eps, P.E. Together they have over 27 years of progressive environmental experience including stream stability assessment and stream restorations. The WCRC has successfully completed a stream restoration of a section of Niokaska Creek in Gulley Park and a section of the West Fork River near Brentwood.

DISCUSSION:

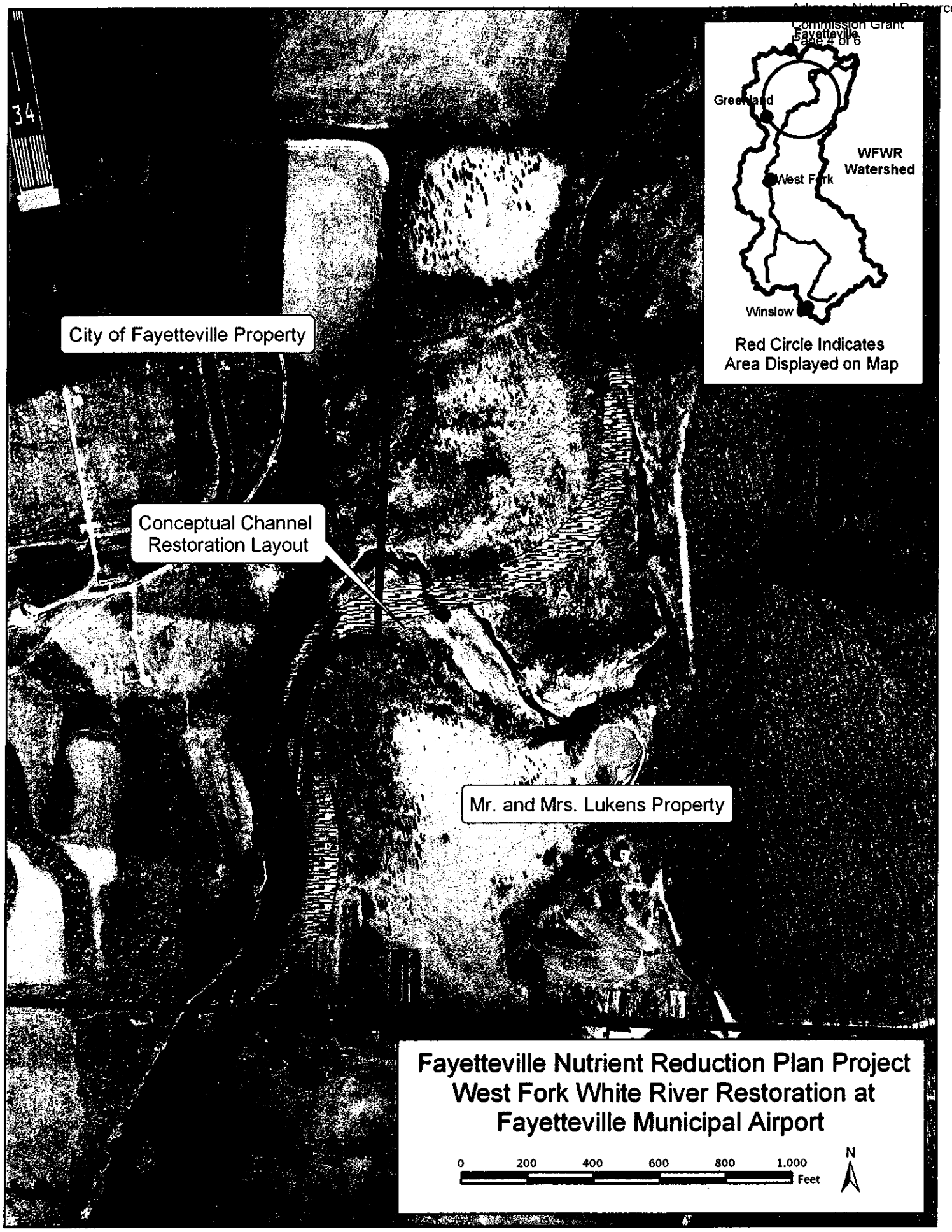
This project will restore an unstable section of 2750' of stream to a morphologically stable form utilizing a natural channel design approach. This project will be considered successful if a 75% percent reduction in suspended sediment resulting from stream bank erosion is observed.

WCRC will prepare the grant application on the City's behalf. The amount requested from ANRC is $328,320; with the City's matching funds providing $247,680, for a project total of $576,000.

If the grant is approved, work is expected to be completed at the end of 2012. WCRC will design the improvements, secure all permits, right of way and easements, contract with a construction contractor for construction of the stream restoration elements, replant the area, and monitor the success of the project.

BUDGET IMPACT

Currently, there is $544,961.12 remaining in the Drainage Study/Phase II Stormwater Management account that has been designated for use to fund projects that improve stormwater quality in the City of Fayetteville. This project will be paid for from these funds.


Greenland
WFWR Watershed
West Fork
Winslow
Red Circle Indicates Area Displayed on Map
City of Fayetteville Property
Conceptual Channel Restoration Layout
Mr. and Mrs. Lukens Property
Fayetteville Nutrient Reduction Plan Project
West Fork White River Restoration at Fayetteville Municipal Airport
0
200
400
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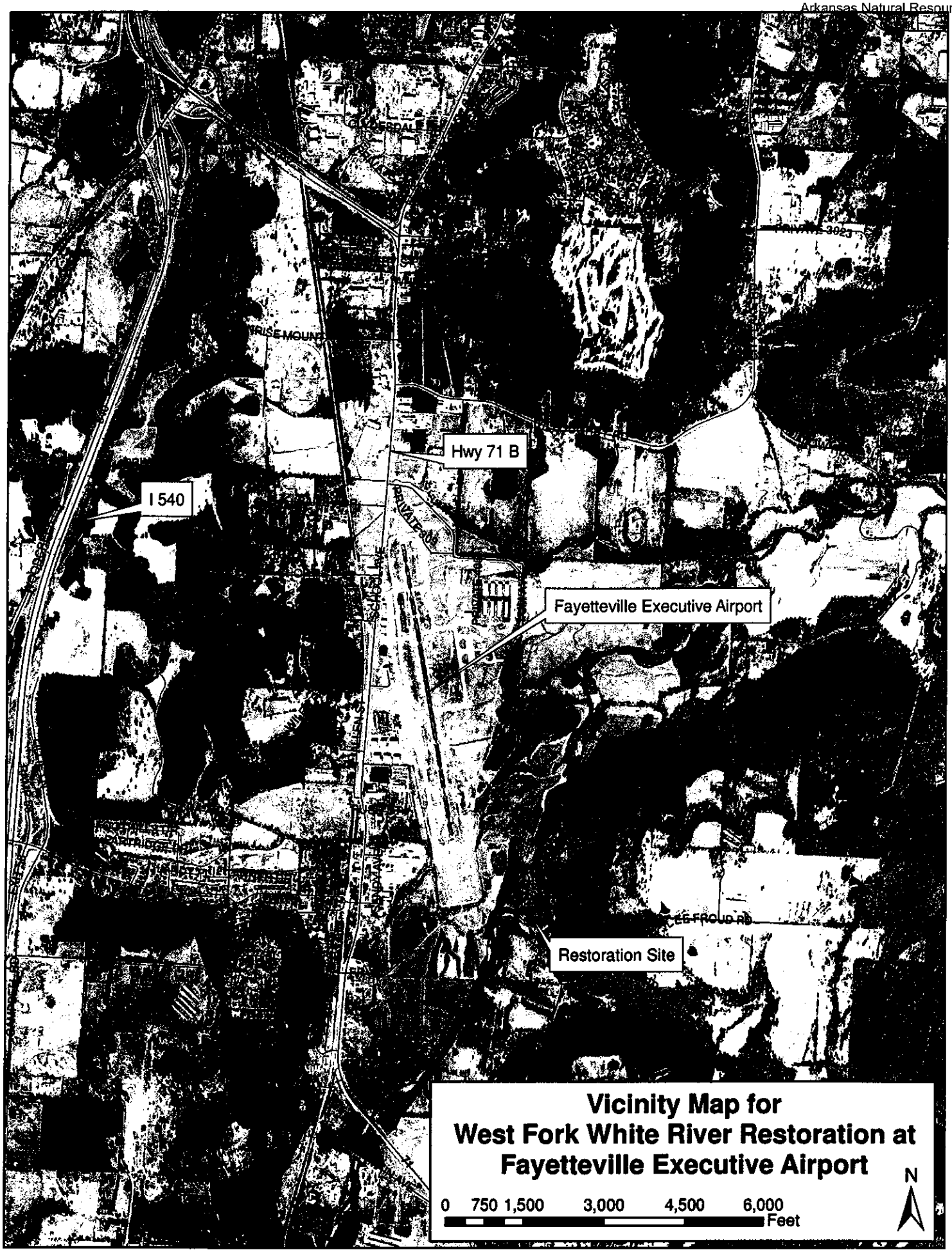
Hwy 71 B
I 540
Fayetteville Executive Airport
Restoration Site
Vicinity Map for
West Fork White River Restoration at
Fayetteville Executive Airport
0 750 1,500 3,000 4,500 6,000
Feet
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City of Fayetteville Staff Review Form

City Council Agenda Items and Contracts, Leases or Agreements

7/7/2009
City Council Meeting Date
Agenda Items Only

Chase Gipson CRG	Parks and Recreation	Parks and Recreation
Submitted By	**Division**	**Department**

Action Required:

Resolution to award RFP # 09–07 to Score American Soccer Co. Inc. for the purchase of youth soccer uniforms in the amount of $27,097 for the Fall 2009 and Spring 2010 Season.

$ 27,097.00	$ 125,523.00	Tournament Supplies and Awards
Cost of this request	Category / Project Budget	Program Category / Project Name
2250.9250.5200.05	$ 19,164.82	Parks Development
Account Number	Funds Used to Date	Program / Project Category Name
N/A	$ 106,358.18	Parks Development
Project Number	Remaining Balance	Fund Name

Budgeted Item [x] **Budget Adjustment Attached** [ ]

Department Director	6.22.09 Date	Previous Ordinance or Resolution #
City Attorney	6/24/09 Date	Original Contract Date:
Finance and Internal Services Director	6/24/09 Date	Original Contract Number:
Chief of Staff	6/22/09 Date	
Mayor	6/24/09 Date	

Received in City Clerk's Office — ENTERED — 6/22/09

Received in Mayor's Office — ENTERED 6/24/09

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council
Thru: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director C. Ed
From: Chase Gipson, Recreation Superintendent
Date: June 19, 2009
Subject: **Resolution to approve a purchase of youth soccer uniforms from Score American Soccer Co. Inc. in the amount of $27,097 for the Fall 2009 Season and the Spring 2010 Season.**

RECOMMENDATION

Parks and Recreation Staff recommends City Council award RFP # 09–07 to Score American Soccer Co. Inc. for $27,097 for the Fall 2009 and Spring 2010 Season. The amount for the Spring Season depends on the number of children who enroll in the program. Allowing an amount for the Spring Season enables the children who register to play only in the Spring Season to have the same uniforms design as the children who play in the Fall Season.

BACKGROUND

One of the fastest growing recreation programs in America is youth soccer. Fayetteville Parks and Recreation's Soccer Program is no exception. This past fall and spring, over 1,600 different kids participated in Fayetteville's soccer program, with 1,280 playing in the fall and 1,430 in the spring. Fayetteville has one of the three largest recreational youth soccer programs in Arkansas.

DISCUSSION

Currently, Fayetteville Parks and Recreation charges a registration fee ranging from $50 to $90 per participant, depending on age. Included in this registration fee is the price for uniforms, a secondary insurance fee, equipment, official's fees and other expenses associate with the program. More specifically, Parks and Recreation budgets $16 per child for soccer uniforms. This includes a shirt, shorts and a pair of soccer socks.

In March, an RFP was released asking companies to submit possible uniforms for our program to use. The selection committee consisted of Sarah Lewis, Vicki Deaton, Kristen Atha, Tiffany Gaulke, Tracie Martin, and Chase Gipson.

Several companies submitted a proposal for the uniform purchase ranging in price from $12.38 to over $20 per uniform set. The committee chose the Score Costa Rica Uniform due to its high quality and durability at a low cost. Score has provided uniforms in three previous seasons (2003, 2004, 2006) for the Youth Soccer program and was very popular with parents and participants. Score met all the qualifications as submitted on the RFP and has always provided good service to Parks and Recreation during previous years.

BUDGET IMPACT

The 2009 Operational Budget includes $27,097 for the purchase of Soccer Uniforms. This purchase will include an approximate total payment of $27,097 for Fall 2009 and Spring 2010. These expense figures depend on the amount of participants who register to play.

Attachments:

Score RFP

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #09-07 AND APPROVING THE PURCHASE OF YOUTH SOCCER UNIFORMS FROM SCORE AMERICAN SOCCER COMPANY, INC. IN THE AMOUNT OF $27,097.00 FOR THE FALL 2009 AND SPRING 2010 SEASON.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #09-07 and approves the purchase of youth soccer uniforms from Score American Soccer Company, Inc. in the amount of $27,097.00 for the Fall 2009 and Spring 2010 Season.

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

City of Fayetteville, Arkansas
Purchasing Division – Room 306
113 W. Mountain
Fayetteville, AR 72701
Phone: (479) 575-8220

RFP (REQUEST FOR PROPOSAL)

REQUEST FOR PROPOSAL: RFP 09-07, Soccer Uniforms
DEADLINE: ***Thursday, March 19, 2009 at 2:00 PM***, Central Standard Time
DELIVERY LOCATION: Room 306 – 113 W. Mountain, Fayetteville, AR 72701
PURCHASING AGENT: Andrea Foren, CPPB, aforen@ci.fayetteville.ar.us, 479.575.8220
DATE OF ISSUE AND ADVERTISEMENT: Friday, March 06, 2009

REQUEST FOR PROPOSAL
RFP 09-07, Soccer Uniforms

No late proposals will be accepted. RFP'S shall be submitted in sealed envelopes labeled "RFP 09-07, Soccer Uniforms" with the name and address of the Proposer.

RFP's shall be submitted in accordance with the attached City of Fayetteville specifications and RFP documents attached hereto. Each Proposer is required to fill in every blank and shall supply all information requested; failure to do so may be used as basis of rejection.

The undersigned hereby offers to furnish & deliver the articles or services as specified, at the prices & terms stated herein, and in strict accordance with the specifications and general conditions of bidding, all of which are made a part of this offer. This offer is not subject to withdrawal unless upon mutual written agreement by the Proposer/Bidder and City Purchasing Manager.

Name of Firm: Score American Soccer Co., INC.
Contact Person: Monica Morales Title: Sales Manager
E-Mail: monica@scoresports.com Phone: 800.626.7774
Business Address: 726 E. Anaheim St
City: Wilmington State: CA Zip: 90744
Signature: Monica Morales Date: 3/17/2009

Bid for
City of Fayetteville RFP#09-07

Bid/ Soccer Uniforms

DATE:	March 17, 2009
CLIENT NAME:	Andrea Foren, CPPB
ACCOUNT NAME:	City of Fayetteville
ADDRESS:	113 West Mountain Street Room #306
CITY: Fayetteville	**STATE:** AR **ZIP:** 72701
PHONE: (479) 575-8220	**FAX:** (479) 575-8257

Soccer Jersey/Short/Sock

Jersey Style		*pricing for youth & adult*
#235 Costa Rica	available in 25 colors	$12.38
#101 American Retro	available in 23 colors	$12.38
#240 Holland	available in 23 colors	$12.38
#208 South Africa	available in 23 colors	$12.38
#290 Chile	available in 24 colors	$12.38
#270 Germany	available in 24 colors	$12.38

With your choice of the following shorts:

#117A Sydney	available in 12 colors
#155A Milan	available in 11 colors
	And Socks
#800 Solid Socks	available in 22 colors

Shipping included in price!

Misc. Information:

- Standard 8" consecutive **back numbers** from 1 or 2 to 99 are **INCLUDED**. Colors available: *navy, red, purple, hunter, burgundy, gold, royal, white with black outline*
- 4" front numbers are $1.00 per jersey.
- Your **city logo,** in standard white with black outline, can be set up and **applied** to the left or center chest **at NO CHARGE.**
- All **add-on uniform** orders will be at the **SAME PRICE.**
- Orders will be packed by team and boxed by division.
- ***Production*** time will be approximately 3 to 4 weeks from receipt of purchase order. ***We will prioritize to meet your needs.***
- ***Delivery*** time will be 4 business days by way of UPS Ground Service.

Please contact MONICA (800) 626-7774 with any questions you may have.

QUOTED BY:	Monica Morales Park & Rec. Sales Manager SCORE American Soccer Company, Inc.

City of Fayetteville
RFP 09-07, Soccer Uniforms
Proposer Information Form

VENDORS WHO DO NOT WISH TO RESPOND TO A BID ARE NOT REQUIRED TO DO SO.

THIS FORM MUST BE SUBMITTED WITH ALL PROPOSALS. FAILURE TO DO SO COULD RESULT IN YOUR PROPOSAL BEING REJECTED AND NOT CONSIDERED FOR SELECTION

Please Print or Type

Company Name: SCORE American Soccer Co, INC **Phone:** 800.626.7774

Address: 726 E. Anaheim St. **Fax:** 800.426.1222

City: Wilmington **Email:** monica@scoresports.com

State: CA **Web Site:** www.scoresports.com

Zip Code: 90744

RFP NUMBER AND RFP OPENING DATE "MUST" BE NOTED ON OUTSIDE OF ENVELOPE.

BIDS MAY NOT BE FAXED DIRECTLY TO THE CITY OF FAYETTEVILLE IN RESPONSE TO THIS REQUEST FOR PROPOSAL. PROPOSAL MUST BE SIGNED IN INK OR IT WILL NOT BE CONSIDERED.

Name (Type or Print): MONICA MORALES **Title:** Sales Manager

Signature: Monica Morales **Date:** 3/17/09

**This section must be signed by an individual who has proper authority to sign documents on behalf of company submitting a proposal.*

City of Fayetteville
RFP 09-07, Soccer Uniforms
Project Information

The City of Fayetteville is now accepting proposals for the purchase of uniforms for the 2009 – 2010 Youth Soccer Season. Proposals should include prices for adult and youth soccer uniforms. Approximately 1,800 uniforms will be ordered for the duration of a soccer year. Uniforms should include **shirt, shorts and socks and have a wide variety of color choices**. The bids will be evaluated using the City's Professional Services Selection Policy, PUR-13. In evaluating the qualifications of each proposal, a review committee will consider the following criteria with the assigned point values that total 100 percent. Evaluation factors outlined shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the successful bidder. While the City of Fayetteville reserves the right to interview any or all proposers, award of a purchase may be made without discussion with bidder after proposals are received. Proposals should, therefore, be submitted on the most favorable terms available.

If you have any questions or need additional information, please contact Andrea Foren at 479-575-8220.

To be considered, written proposals must be received by **March 19, 2009 no later than 2:00 p.m.**, in the format set fourth in the accompanying documents. A non-responsive or incomplete proposal will not be considered. **Please note that a complete, responsible, responsive proposal is one that includes samples.** Proposals received after this deadline will not be considered. Proposals should be hand delivered or mailed to the following address:

Andrea Foren, CPPB
City of Fayetteville, Purchasing Agent
113 West Mountain Street – Room #306
Fayetteville, AR 72701
Telephone: (479) 575-8220

The outside of the envelope must be clearly marked "RFP 09-07, Soccer Uniforms".

1. It shall be clearly understood that any costs incurred by the proposer in responding to this request for proposal is at the Proposer's own risk and expense as a cost of doing business, and the City is not liable for reimbursement to the proposer for any expense so incurred, regardless of whether or not the proposal is accepted.

2. Any inquires or requests for explanation in regard to the City's requirements should be made to the above listed number. The names of any persons or firms submitting questions, clarifications, or requests will not be disclosed until after the award of a contract.

3. Any conditions or expectation on the part of the proposer for performance by the City must be set forth in the proposal.

4. At the discretion of the City, one or more proposers may be asked for more detailed information or an interview before final award is made.

5. The City is not responsible for misdirected proposals. Proposer should call the Purchasing Office at (479) 575-8220 to insure receipt of their proposal documents prior to opening time and date listed above.

6. Proposers must provide the City with their proposals signed by a person having legal authority to submit bids on behalf of the Proposer.

7. All vendors are required to submit samples of all proposed products; however, it is not necessary to submit a sample for each color. All samples become the property of the City of Fayetteville.

8. Approximately 1,800 uniforms will be ordered for the duration of a soccer year. Uniforms should include **shirt, shorts and socks and have a wide variety of color choices**.

9. The City of Fayetteville reserves the right to deviate from estimated quantities.

10. Proposals should include shipping requirements and lag time between when the City of Fayetteville places the order and receives the order.

11. The City of Fayetteville requires all vendors and contractors doing business with the City not to discriminate against any person on the basis of race, age, color, religion, sex, ancestry, non-job-related handicaps, or national origin. The City requires the contractor to be familiar with and comply in every respect with Civil Rights Laws.

12. Upon agreement of both parties, the contract shall be renewed for one more year to commence on January 1, 2010 and end December 31, 2010.

13. This RFP will be selected using the following evaluation criteria:

1. Qualifications **20%**

Qualifications in relation to project to be performed. Information reflecting qualifications of the proposer. Indicate specialized experience of the proposer in connection with the type of service required as outlined in the purchase.

2. Quality, Design and Appearance **25%**

Quality, design and appearance of the proposed uniform will be taken into consideration. The uniform will consist of shirt, shorts and socks. Uniforms need to be available in all sizes and colors. Sizes should range from Youth Small (YS) to Adult Extra Large (AXL). The variety of colors should range from 12 – 16 per style. Proposers are encouraged to present several possible uniform designs to the committee. Each proposed uniform should be supported with a sample.

3. Proposed Work Method **25%**

Proposed method of doing work is another consideration. This includes shipping prices and procedures. A proposed work plan of how Fayetteville Parks and Recreation and your organization will work. This includes organization's contact, ordering, customer service and the turn-around time between the order and the date the shipment is received. It is very important the proposer specify the length between actual order time and a ship date.

4. Past Performance **20%**

Previous evaluations shall be considered a significant factor. If previous evaluations with the City are not available, past performance records with others will be used, including quality of work, timely performance, diligence, ability to meet past budgets, and any other pertinent information. Proposer will provide a list of similar orders performed and person whom we can contact for information.

5. Price **10%**

All pricing should include numbering on the back of the uniforms before shipment. Numbering will be limited at two numbers per jersey. Numbering must be available in several colors to match uniforms accordingly and be a minimum of 7 inches in height.

RFP 09-07

Soccer Uniforms

List of Proposals Submitted

	Firm	Address	City	State	Zip Code	Phone	E-mail	Contact
1	Anaconda Sports, Inc.	85 Katrine Lane	Lake Katrine	NY	12449	(888)914-6319 x186	gcherny@anacondasports.com	Gregory Cherny
2	Challenger Teamwear	8263 Flint Street	Lenexa	KS	66214	(913)599-4884 x230	plawrence@challengerteamwear.com	Paul Lawrence
3	Home Team Athletics	242 S. Wilmington Hwy	Jacksonville	NC	28540	(910)938-0862	hometeam@ncfreedom.net	Dennis Jones
4	Score American Soccer Co., Inc.	726 E. Anaheim Street	Wilmington	CA	90744	(800)626-7774	monica@scoresports.com	Monica Morales
5	Screenprint Plus	1336 SE 47 Street	Cape Coral	FL	33904	(239)541-4921	sports@screenprintplus.com	John Steinweg
6	Squadra Soccer	4242 SW 74th Avenue	Miami	FL	33155	(305)261-2467	kgonzalez@squadrasoccer.com	Kristian Gonzalez
	Riddell Athletic Products -- No Bid	669 Sugar Lane	Elyria	OH	44035	8002755338 x1125		James Brade

City of Fayetteville Staff Review Form

City Council Agenda Items and Contracts, Leases or Agreements

7/7/2009
City Council Meeting Date
Agenda Items Only

Karen Minkel		Strategic Planning/Internal Consult.
Submitted By	**Division**	**Department**

Action Required:

A resolution to support an Alternatives Analysis study to determine the feasibility of a light rail transit system in Northwest Arkansas.

N/A	$ -	
Cost of this request	Category / Project Budget	Program Category / Project Name
	$ -	
Account Number	Funds Used to Date	Program / Project Category Name
	$ -	
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐ **Budget Adjustment Attached** ☐

Karen Minkel — 6/17/09
Department Director — Date

D. P. Whitaker — 6/17/09
City Attorney — Date

Paul A. Becker — 6/18/2009
Finance and Internal Services Director — Date

Chief of Staff — 6/18/09
Date

Mayor — 6/19/09
Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Received in City Clerk's Office — ENTERED 6/17/09 QO

Received in Mayor's Office — ENTERED 6/17/09

Comments:

RESOLUTION NO. _____

A RESOLUTION TO SUPPORT AN ALTERNATIVES ANALYSIS STUDY TO DETERMINE THE FEASIBILITY OF A LIGHT RAIL TRANSIT SYSTEM IN NORTHWEST ARKANSAS.

WHEREAS, a 2005 study completed by Beta-Rubicon, Inc. recommended that Northwest Arkansas pursue a commuter rail feasibility study; and

WHEREAS, the 2007 study conducted by the Community Design Center at the University of Arkansas found that Northwest Arkansas is an ideal candidate for light rail transit; and

WHEREAS, the major cities in the Northwest Arkansas corridor have downtowns located along the existing north-south rail line, making it the most efficient configuration for utilizing light rail; and

WHEREAS, a light rail transit system would stimulate significant economic development; and

WHEREAS, a light rail transit system would reduce vehicular traffic demand, expanding capacity on existing highways for trucking and commerce; and

WHEREAS, a light rail transit system would significantly reduce the region's energy consumption and reduce land development sprawl; and

WHEREAS, two-thirds of Northwest Arkansas's current population live within one mile of the existing rail right-of-way and almost all major employment and activity centers are located along the rail corridor; and

WHEREAS, right-of-way acquisition for rail transit becomes increasingly expensive; and

WHEREAS, the U.S. Department of Transportation provides New Starts grant funding for transportation systems used exclusively for mass transportation ; and

WHEREAS, twenty percent of the federal "New Starts" projects have been awarded to regions that compete with Northwest Arkansas for labor and business; and

WHEREAS, the first step in securing federal funds for mass transit projects is to conduct an Alternatives Analysis study.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas, requests that the Mayor advocate for the funding of an Alternatives Analysis study with federal representatives and with regional organizations such as the Northwest Arkansas Planning Commission, the Northwest Arkansas Regional Mobility Authority, Northwest Arkansas Council and other significant regional bodies.

Section 2: That the City Council of Fayetteville, Arkansas encourages other municipalities in the Northwest Arkansas corridor to pass similar resolutions advocating for the funding of an Alternatives Analysis study.

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED:

By:_____
LIONELD JORDAN, Mayor

ATTEST:

By:_____
SONDRA SMITH, City Clerk/Treasurer

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Karen Minkel, Strategic Planning and Internal Consulting Director K.M.

Date: June 15, 2009

Subject: Light Rail Feasibility Study (ADM 09-3347)

RECOMMENDATION

Strategic Planning Staff recommends approval of a resolution to support an Alternatives Analysis study to determine the feasibility of a light rail transit system in Northwest Arkansas.

BACKGROUND

Beta-Rubicon, Inc. conducted a pre-feasibility study for rail transit in Northwest Arkansas in 2005 and recommended that the region pursue a feasibility study for a commuter rail alternative based on favorable indicators such as the region's population growth and existing rail corridor. The University of Arkansas Community Design Center (CDC) corroborated these findings in its 2007 study, "NWA Rail, Visioning Rail Transit in Northwest Arkansas: Lifestyles and Ecologies." The CDC's study went further than the pre-feasiblity study in its arguments, suggesting that light rail would significantly benefit the region economically and environmentally and that the region met the initial criteria for eligibility in the federal New Starts program, which funds mass transportation systems across the country.

The first step to obtaining New Starts funds is to conduct an Alternatives Analysis study, which evaluates the costs, benefits and impacts of a range of transportation alternatives and provides a recommendation for the best investment strategy. These studies typically cost between $1.5 and $2.5 million, but can be funded through a federal transportation appropriation earmark. Light rail transit received the greatest number of public votes during the public comment sessions held before the adoption of the 2030 Regional Transportation Plan, and the Northwest Arkansas Regional Planning Commission has requested a federal transportation earmark for this analysis three times. The earmark has not been awarded to date, but the Commission is currently pursuing money that was alloted for transportation but not earmarked in 2009.

This issue resurfaced during the Fayetteville Forward Economic Development Summit in the Transportation action group. Participants wanted the City of Fayetteville to aggressively advocate for a light rail transit system at the regional level, and City Council members identified this item as one of the priorities to emerge from the summit.

DISCUSSION

This resolution directs the Mayor to support the efforts of the Regional Planning Commission in obtaining the Alternatives Analysis earmark by lobbying Northwest Arkansas's federal representatives, regional bodies and municipalities.

BUDGET IMPACT

None.

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

7/7/2009
City Council Meeting Date
Agenda Items Only

Chris Brown	Engineering	Development Services
Submitted By	**Division**	**Department**

Action Required:

A resolution authorizing the donation of right-of-way along Wedington Drive containing 0.09 acres and being a part of Parcel No. 765-13741-007, and to authorize the Mayor to execute deeds and any other necessary papers to effect a transfer of ownership of this property to the Arkansas State Highway Commission.

Cost of this request	$ - Category / Project Budget	Program Category / Project Name
Account Number	$ - Funds Used to Date	Program / Project Category Name
Project Number	$ - Remaining Balance	Fund Name

Budgeted Item ☐ **Budget Adjustment Attached** ☐

Department Director	06.18.09 Date	Previous Ordinance or Resolution #
City Attorney	6/24/09 Date	Original Contract Date:
Finance and Internal Services Director	6/24/09 Date	Original Contract Number:
Chief of Staff	6/24/09 Date	
Mayor	6/24/09 Date	

Received in City Clerk's Office — ENTERED 6/24/09

Received in Mayor's Office — ENTERED 6/24/09

Comments:

Fayetteville
ARKANSAS

CITY OF FAYETTEVILLE, ARKANSAS
ENGINEERING DIVISION

113 West Mountain
Fayetteville, AR 72701
Ph: (479) 575-8206
FAX: (479) 575-8202
TDD (Telecommunications Device for the Deaf): (479) 521-1316

Date: June 17, 2009

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
Chris Brown, City Engineer

From: Jill Goddard, Land Agent

Subject: A resolution authorizing the donation of right-of-way along Wedington Drive containing 0.09 acres and being a part of Parcel No. 765-13741-007, and to authorize the Mayor to execute deeds and any other necessary papers to effect a transfer of ownership of this property to the Arkansas State Highway Commission.

RECOMMENDATION

Staff recommends Council approval of the donation of right-of-way to the Arkansas State Highway Commission.

BACKGROUND

The Arkansas State Highway Department (AHTD) has a current construction project (Job 012069) for improvements at various I-540 interchanges. Included in this project improvements to the I-540/Wedington Drive interchange.

DISCUSSION

For the purposes of constructing the proposed project, AHTD is requesting the donation of right-of-way already dedicated to the City of Fayetteville. Parcel No. 765-13741-007 (0.11 acres) was dedicated to the City of Fayetteville for right-of-way purposes via Deed Ref. 2004-00030051, recorded on July 28, 2004. This was part of the requirements connected with the lot split for Coulson Oil Company, Inc. in 2004. AHTD is now requesting that 0.09 acres of this right-of-way be conveyed to them by deed.

BUDGET IMPACT

AHTD is requesting this as a donation (no compensation). As the original dedication to the City of Fayetteville from Coulson Oil Company, Inc. was also without compensation, there is no perceived need for compensation.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE DONATION OF RIGHT-OF-WAY ALONG WEDINGTON DRIVE CONTAINING 0.09 ACRES TO THE ARKANSAS STATE HIGHWAY COMMISSION (BEING A PART OF PARCEL NO. 765-13741-007)

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby authorizes the donation of 0.09 acres of land (being a part of Parcel No. 765-13741-007) to the Arkansas State Highway Commission for right-of-way associated with the reconstruction of I-540 interchanges in the City of Fayetteville, Arkansas, in connection with AHTD Job 012069.

Section 2. That the City Council of the City of Fayetteville, Arkansas, hereby authorizes the Mayor and City Clerk to execute deeds and any other instruments necessary to effect the conveyance of this property.

PASSED and APPROVED this 7th day of July, 2009.

APPROVED:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

JOB NAME I-540 Interchanges Short-Term Impvts. (F) JOB 012069
TRACT 5

AGREEMENT FOR DONATION
REAL ESTATE FOR HIGHWAY PURPOSES

Grantor: City of Fayetteville
Address:

Grantee: ARKANSAS STATE HIGHWAY COMMISSION

IN CONSIDERATION of the benefits that will inure to the Grantor(s) and the public, the undersigned does hereby give and grant to the Arkansas State Highway Commission, an agency of the State of Arkansas, upon the terms and conditions hereinafter stated, the right to purchase the following described real estate, save and except the oil and gas only therein and thereunder, situated in the County of Washington, State of Arkansas, to wit:

LEGAL DESCRIPTION

Part of the Northeast Quarter of the Southwest Quarter of Section 7, Township 16 North, Range 30 West, Washington County, Arkansas, more particularly described as follows:

Commencing at a point being used as the Center Quarter corner of Section 7; thence North 87° 22' 20" West along the North line of the Northeast Quarter of the Southwest Quarter of Section 7 a distance of 921.80 feet to a point on the Southerly right of way line of Arkansas State Highway 16 as established by AHTD Job 040277; thence South 85° 23' 19" East along said right of way line a distance of 174.11 feet to a point on the Southerly right of way line of Arkansas State Highway 16 as established by AHTD Job 012069 for the POINT OF BEGINNING; thence South 85° 27' 26" East along the Southerly right of way line of Arkansas State Highway 16 as established by AHTD Job 040277 a distance of 386.49 feet to a point; thence South 87° 01' 41" East along said right of way line a distance of a distance of 8.91 feet to a point; thence South 02° 09' 27" West a distance of 8.94 feet to a point; thence North 86° 08' 05" West a distance of 297.03 feet to a point on the Southerly right of way line of Arkansas State Highway 16 as established by AHTD Job 012069; thence North 78° 24' 47" West along said right of way line a distance of a distance of 99.51 feet to the point of beginning and containing 0.09 acres more or less as shown on plans prepared by the AHTD referenced as Job 012069.

AJR-5/6/09

IN ACCORDANCE with Public Law 91-646, Uniform Relocation Assistance and Real Property Acquisition Policies Act, the Grantor has the right to receive just compensation for the subject property. Also, the Grantor is entitled to an appraisal of the subject property. Execution of this agreement will release the Commission from the obligation of providing just compensation and an appraisal.

"Closing costs will not accrue to the Grantor(s) as the Grantee's Attorney will prepare the necessary documents for closing and the Grantee will pay the cost of recording all instruments conveying title to the Arkansas State Highway Commission".

"Grantor(s) further agrees neither to sell nor encumber the said real estate during the term of this "Agreement for Donation".

Dated this _____day of _____, 2009.

_____	_____
Signature	Signature
Fed ID/SS# _____	Fed ID/SS# _____

ACKNOWLEDGMENT

STATE OF)
) SS
COUNTY)

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public, acting within and for the aforesaid County, on this day personally appeared _____ _____well known to me to be the person(s) whose name(s) is subscribed to the foregoing instrument and stated to me that__ _____executed the same for consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public____day of_____, 2009.

_____	_____
MY COMMISSION EXPIRES:	NOTARY PUBLIC

MORTGAGE AUTHORIZATION

Form must be filled out completely, signed and submitted to the
Right of Way Division/Administrative Section immediately following first contact.

Job #: 012069 Tract#: 5

Property Owner: _____

Address: _____

_____

Telephone #: _____

Social Security #/Federal I.D.#: _____

Mortgage Company: NONE

Address: _____

_____

Telephone #: _____

Loan #: _____

Contact Person: _____

Due to the construction of the above-mentioned project, we are acquiring property from your mortgagor. It will be necessary to obtain a Partial Release from your company. The mortgagor is aware that some or all the proceeds from this transaction may be required to be applied to the principal balance of the mortgage. The mortgagor is also aware that we will be negotiating only with the mortgagor and that any checks for funds conveyed will be made to the property owner.

If no mortgage exists, write "NONE."

This form must be completed and signed by the property owner, whether a mortgage exists or not.

By our signatures we are authorizing the Arkansas State Highway and Transportation Department to enter into the process necessary to obtain a Partial Release.

Property Owner / Mortgagor's Signature: _____ Date: _____

_____ Date: _____

Form **W-9** (Rev. November 2005) Departments of the Treasury Internal Revenue Service	**Request for Taxpayer Identification Number and Certification**	**Give form to the requestor. Do not send to the IRS.**

Print or type
See Specific Instructions on page 2

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☐ Other ▶ _____ ☐ Exempt from backup withholding

Address (number, street, and apt. or suite no.)

City ,state, and Zip code

Requester's name and address (optional)
Arkansas State Highway and Transportation Department
Right of Way Division
P. O. Box 2261
Little Rock, AR 72203

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarding entity, see Part I instructions on page 3. for other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one mane, see the chart on page 4 for guidelines on whose number to enter.

Social security number

___ - __ - ____

or

Employer identification number

__ - _____

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the internal Revenue Servise (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividens, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U. S. person (including a U. S. resident alien)

.**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividens on your tax return. For real estate transactions, item2 does not apply. For mortgage interest paid, acquisition or abandonment of secure property, cancellation of debtcontribution to an individual retirement arrangement (IRA), and generally, payment other than interest or dividens, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here Signature of U. S. Person ▶ Date ▶

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U. S. Person. Use Form W-9 only if you are a U. S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issed),
2. Certify that you are not subject to backup withholdin, or
3. Claim exemptions from backup withholding if you are a U. S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U. S. person, your allocable share of any partnership income from a U. S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under laws of the United States, or
- Any estate (other than than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U. S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U. S. status and to avoid withholding on your share of the partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U. S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U. S. owner of a disregared entity and not the entity,

TITLE III - UNIFORM REAL PROPERTY ACQUISITION POLICY
Uniform Policy on Real Property Acquisition Practices

Section 301. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.
(2) Real property shall be appraised before the initiation of negotiation, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.
(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefore and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.
(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.
(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.
(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.
(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.
(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.
(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

Donations

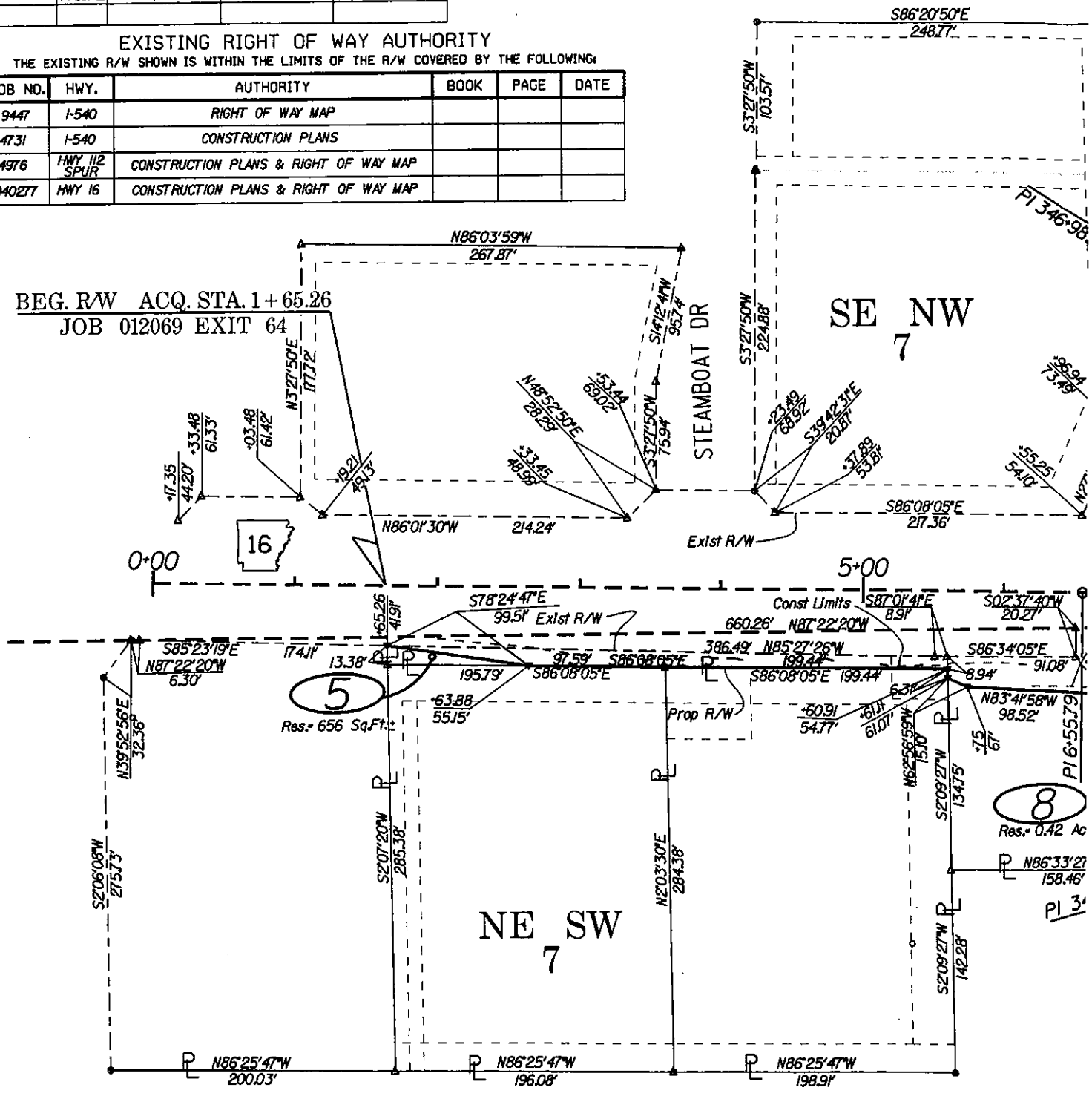
Section 112 (Federal Aid Highway Amendments of 1974)
"Nothing in this title, or in any other provision of law, shall be construed to prevent a person whose real property is being acquired in connection with a project under this title, after he has been fully informed of his right to receive just compensation for the acquisition of his property, from making a gift or donation of such property, or any part thereof, or of any of the compensation paid therefore, to a Federal agency, a State or a State agency, or a political subdivision of a State, as said person shall determine."

LOT SCHEDULE
PALAK ADDITION

TRACT	LOT	SQ. FT.	ACQ.	RESIDUAL
9	1	82,281 ±	561 ±	81,720 ±
	2	125,168 ±	0	125,168 ±
	Tract 2	98,306 ±	0	98,306 ±

EXISTING RIGHT OF WAY AUTHORITY
THE EXISTING R/W SHOWN IS WITHIN THE LIMITS OF THE R/W COVERED BY THE FOLLOWING:

JOB NO.	HWY.	AUTHORITY	BOOK	PAGE	DATE
9447	I-540	RIGHT OF WAY MAP			
4731	I-540	CONSTRUCTION PLANS			
4976	HWY 112 SPUR	CONSTRUCTION PLANS & RIGHT OF WAY MAP			
040277	HWY 16	CONSTRUCTION PLANS & RIGHT OF WAY MAP			



NO.	DATE	DESCRIPTION	BY	CK'D
1	6/9/09	DELETED TRACTS 6 AND 7	WHK	DJH

DATE: 5/22/2009 REVISIONS
DESIGNED: Ashley Reeder REVIEWED: Dale Hodges

TRACT	OWNERSHIP	TITLE	PARCEL AREA IN ACRES:	TO ACQUIRE	PARCEL AREA IN SQ. FT.:	TO ACQUIRE
9	P.M.K. Investment, Inc.	21	7.02	0.01	305,755	561
8	Angel Srygley Living Trust	27	0.47	0.05	20,622	2,312
7	DELETED					
6	DELETED					
5	City of Fayetteville	24	0.10	0.09	4,361	3,705

STEAMBOAT
WEDINGTON DRIVE
WEDINGTON DRIVE-ADD RIGHT TURN LANE
SHILOH DRIVE-ADD LEFT TURN LANE
SHILOH DRIVE
ON-RAMP
SHILOH OFF-RAMP DRIVE
SOUTHBOUND OFF-RAMP WIDEN TO 3 LANES, DUAL RIGHT TURN LANES, SINGLE LEFT TURN LANE
FULBRIGHT EXPRESSWAY
NORTHBOUND OFF-RAMP WIDEN TO 2 LANES, LEFT LANE AND RIGHT LANE
FUTRALL OFF-RAMP DRIVE
STATE HWY. NO. 16
U.S. INTERSTATE NO.540
ON-RAMP
FUTRALL
FUTRALL DRIVE WIDEN TO 3 LANES, DUAL LEFT TURN LANES, SINGLE RIGHT TURN LANE
WEDINGTON DRIVE-ADD RIGHT TURN LANE

City of Fayetteville Staff Review Form

City Council Agenda Items and Contracts, Leases or Agreements

6/16/2009
City Council Meeting Date
Agenda Items Only

Dara Sanders	Planning	Development Services
Submitted By	**Division**	**Department**

Action Required:

RZN 09-3271: (Sale Barn/Campus Crest LLC, 562): Submitted by Jorgensen & Associates for property located at the old Washington County Sale Barn, north and east of 11th Avenue and Government Avenue. The property is zoned I-1, Heavy Commercial/Light Industrial, and contains approximately 8.87 acres. The request is to rezone the subject property to DG, Downtown General.

Cost of this request	$ - Category / Project Budget	Program Category / Project Name
Account Number	$ - Funds Used to Date	Program / Project Category Name
Project Number	$ - Remaining Balance	Fund Name

Budgeted Item ☐ **Budget Adjustment Attached** ☐

Department Director — 05.29.09 Date

City Attorney — 5-24-09 Date

Finance and Internal Services Director — 6-1-2009 Date

Chief of Staff — 6-1-09 Date

Mayor — 6/1/09 Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Received in City Clerk's Office — ENTERED

Received in Mayor's Office — ENTERED 6/1/09

Comments:

Left on First Reading Date 6/16/09 CC Mtg

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Jeremy C. Pate, Director of Development Services

From: Dara Sanders, Current Planner

Date: May 28, 2009

Subject: Rezoning for Washington County Sale Barn (RZN 09-3271)

RECOMMENDATION

Staff and the Planning Commission recommend approval of rezoning the subject property, located at noth of 11th Street and east of Government Avenue, from I-1, Heavy Commercial/Light Industrial to DG, Downtown General.

BACKGROUND

The subject property, located south of Martin Luther King Jr. Boulevard and west of South School, was developed in 1950 as the Washington County Sale Barn (see attached aerial imagery). The 8.87-acre tract has frontage onto 11th Street, Dunn Avenue, National Street, and Government Avenue.

Initially, the applicant proposed to rezone the property from I-1, Heavy Commercial/Light Industrial to RMF-24, Residential Multi-family, 24 units/acre. Staff did not recommend in favor of the requested RMF-24 zoning district, finding that, while the multi-family use would be compatible with the surrounding uses and consistent with the City Neighborhood zoning district, the RMF-24 zoning district in this area would permit a development form that would be contrary to the City's adopted land use planning objectives and principles of City Plan 2025. City Plan 2025 encourages pedestrian-friendly buildings with entrances that address the street, utilizing principles of traditional residential urban design to create compatible, livable and accessible neighborhoods. This includes adequate transition to existing neighborhoods. The RMF-24 zoning district, when applied to large tracts of land, still permits the conventional, car-oriented development form that is clearly discouraged by the City's adopted goals and polices, and which would be inappropriate and incompatible with the form of development existing within this surrounding neighborhood.

The applicant submitted an official request for the Downtown General zoning district prior to the planning Commission meeting, and staff recommended that the Planning Commission forward the request to the City Council with a recommendation of approval.

The Downtown General zoning district, which allows by right the same residential uses as the RMF-24 zoning district, will more likely result in a development form that is consistent with the City's adopted land use planning objectives and principles of City Plan 2025. The build-to-zone and minimum building street frontage requirements of the Downtown General zoning district will ensure a traditional urban design and provide a

pedestrian friendly streetscape, while also providing the potential for low-intensity nonresidential uses that in this form would be compatible with the established single-family neighborhood to the south and the higher intensity non-residential uses to the north and east. Staff finds that down zoning the subject property from I-1, Heavy Commercial/Light Industrial to the Downtown General zoning district will result in an appropriate transition in scale and use from the commercial uses along Martin Luther King Jr. Boulevard and South School Street to the residential uses to the west and south, while providing the potential for low-intensity nonresidential uses that could serve the surrounding neighborhood.

DISCUSSION

This item was heard at the regular Planning Commission meeting on May 26, 2009. The Planning Commission voted 6-1-0 to forward this rezoning request to the City Council, with Commissioner Cabe voting "no".

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 09-3271, FOR APPROXIMATELY 8.87 ACRES, LOCATED AT THE OLD WASHINGTON COUNTY SALE BARN, NORTH AND EAST OF 11TH AVENUE AND GOVERNMENT AVENUE FROM I-1, HEAVY COMMERCIAL/LIGHT INDUSTRIAL, TO DG, DOWNTOWN GENERAL

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the zone classification of the following described property is hereby changed as follows:

From I-1, Heavy Commercial/Light Industrial to DG, Downtown General, as shown and described on attached exhibits "A" and "B".

Section 2: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and **APPROVED** this day of , 2009.

APPROVED: ATTEST:

By: _____ By: _____

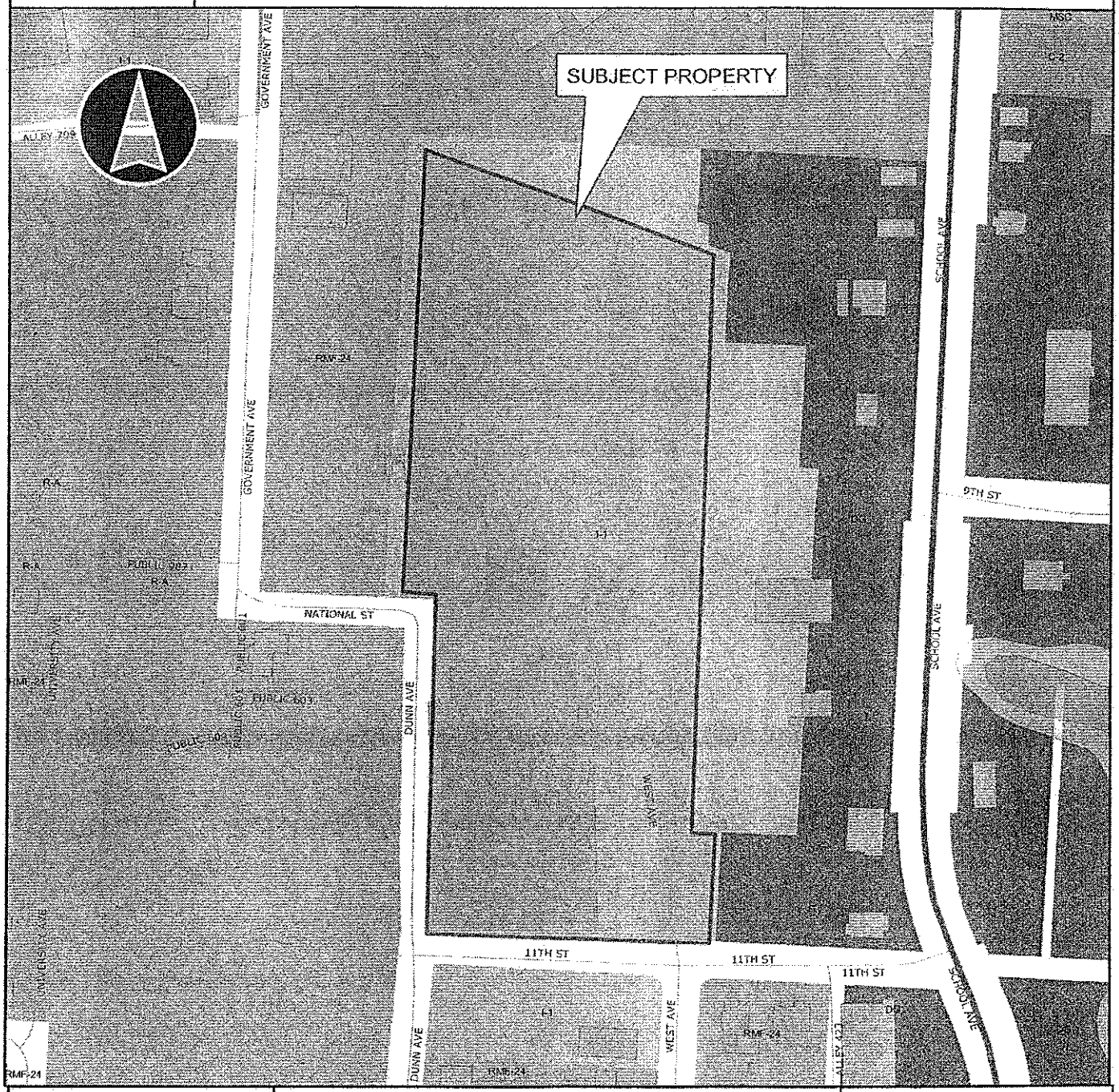
LIONELD JORDAN, Mayor **SONDRA E. SMITH,** City Clerk/Treasurer

EXHIBIT "A"

RZN09-3271

Close Up View

SALE BARN/ CAMPUS CREST LLC



Overview

0 75 150 300 450 600 Feet

Legend

- RZN09-3271
- 0.2% Chance Floodplain (500 - yr Floodplain)
- Zone A, 1% Chance Floodplain (100 - yr Floodplain)
- Zone AE, 1% Chance Floodplain (100 - yr Floodplain)
- 2007 Footprints
- Design Overlay District
- Fayetteville
- Planning Area

EXHIBIT "B"
RZN 09-3271

LEGAL DESCRIPTION: (I-1 TO DG)

A PART OF THE NW1/4 OF THE NE1/4 OF SECTION 21, T16N, R30W IN WASHINGTON COUNTY, ARKANSAS AND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE NW CORNER OF SAID NW1/4, NE1/4 THENCE S00°46'21"W 230.00 FEET, THENCE S71°53'27"E 18.86 FEET TO THE P.O.B., THENCE S71°53'27"E 414.70 FEET TO A POINT WHICH IS 16.00 FEET EAST OF THE NW CORNER OF BLOCK 16 OF FERGUSON'S ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS, THENCE S00°07'02"E 795.21 FEET TO THE SOUTH LINE OF LOT 16, BLOCK 17 OF SAID FERGUSON'S ADDITION, THENCE S89°10'06"E 32.00 FEET, THENCE S00°49'54"W 149.32 FEET, THENCE S89°57'52"W 380.45 FEET, THENCE N00°49'05"W 465.04 FEET, THENCE N87°19'20"W 46.76 FEET, THENCE N00°46'21"E 607.00 FEET TO THE P.O.B.; CONTAINING 8.87 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

161.22 Downtown General.

(A) *Purpose. Downtown General* is a flexible zone, and it is not limited to the concentrated mix of uses found in the *Downtown Core* or *Main Street / Center. Downtown General* includes properties in the neighborhood that are not categorized as identifiable centers, yet are more intense in use than *Neighborhood Conservation.* There is a mixture of single-family homes, rowhouses, apartments, and live/work units. Activities include a flexible and dynamic range of uses, from public open spaces to less intense residential development and businesses. For the purposes of Chapter 96: Noise Control, the Downtown General district is a residential zone.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings.
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 24	Home occupations
Unit 25	Professional offices
Unit 26	Multi-family dwellings

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Trades and services
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communication facilities
Unit 40	Sidewalk Cafes

(C) *Density. None*

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling (all unit types)	18 ft.

(2) *Lot area minimum.* None.

(E) *Setback regulations.*

Front	The principal façade of a building shall be built within a build-to zone that is located between the front property line and a line 25 ft. from the front property line.
Side, facing street	The principal façade of a building shall be built within a build-to zone that is located between the front property line and a line 25 ft. from the front property line.
Side, internal	None
Rear, without easement or alley	5 ft.
Rear, from center line of an easement or alley	12 ft.

(F) *Minimum buildable street frontage.* 50% of lot width.

(G) *Height regulations.* Maximum height is 4 stories or 56 feet which ever is less.

(H) *Parking regulations.* No parking lots are allowed to be located in the front or side build-to-zone facing a public right of way.

LAW OFFICE OF BOB ESTES
ONE EAST CENTER STREET, SUITE 200, FAYETTEVILLE, AR 72701-5302
TELEPHONE (479) 521-4900
FAX (479) 587-0700
email bobestes@arkansas.net

May 22, 2009

Mr. Jeremy Pate
Development Services Department Director
125 West Mountain
Fayetteville, AR 72701

VIA E-MAIL
AND HAND DELIVERED

Re: RZN 09-3271 (Sale Barn/Campus Crest LLC 562)

Dear Director Pate:

As you know this attorney represents the applicant, Campus Crest LLC in the entitled rezoning request.

Please accept this letter as an amendment to the March 30, 2009 Rezoning Application to rezone that portion of the subject property that is now zoned I-1 to RMF-24 to a request to rezone that portion of the property to Downtown General.

Please accept this letter as my further request that this amendment be made a part of the March 30, 2009 Application, and be included in the Tuesday evening May 26, 2009 Staff Report to the Commission.

With warmest regards.

Yours truly,

Bob Estes

BE:skd

cc: Mr. Alex B. Eyssen VIA E-MAIL
David L. Jorgensen, P.E. VIA E-MAIL

PC Meeting of May 26, 2009

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO:	Fayetteville Planning Commission
FROM:	Dara Sanders, Current Planner
THRU:	Jeremy Pate, Director of Current Planning
DATE:	~~May 18, 2009~~ *Update May 28, 2009*

RZN 09-3271: (SALE BARN / CAMPUS CREST LLC, 562): Submitted by JORGENSEN & ASSOC for property located at THE OLD WASHINGTON COUNTY SALE BARN, N & E OF 11TH AVENUE AND GOVERNMENT AVENUE. The property is zoned I-1, HEAVY COMMERCIAL/LIGHT INDUST and contains approximately 8.87 acres. The request is to rezone the subject property to RMF-24, Residential Multi-family 24 units per acre.

Planner: Dara Sanders

BACKGROUND:

Property Description: The subject property, located south of Martin Luther King Jr. Boulevard and west of South School, was developed in 1950 as the Washington County Sale Barn (see attached aerial imagery). The 8.87-acre tract has frontage onto 11th Street, Dunn Avenue, National Street, and Government Avenue.

SURROUNDING LAND USE AND ZONING:

Direction from Site	Land Use	Zoning
North	Farmer's Cooperative	Main Street/Center
South	Residential	I-1, Light Industrial RMF-24, Residential Multi-family 24 units/acre
East	Offices, Restaurants	Downtown General
West	National Cemetery Residential	RMF-24, Residential Multi-family 24 units/acre R-A, Residential Agricultural

Proposal: The applicant proposes to rezone the property from I-1, Heavy Commercial/Light Industrial to RMF-24, Residential Multi-family, 24 units/acre. Currently, a portion of the Sale Barn property is zoned RMF-24, Residential Multi-family, 24 units/acre.

Public Comment: Staff has received public comment in opposition of the proposed zoning district based on the type of development that is produced by the requested RMF-24 zoning district. Staff has not received opposition to the proposed multi-family use. The applicant did present this request at a neighborhood meeting.

Discussion: Staff finds that the residential uses permitted in the RMF-24 zoning district would be compatible with the surrounding properties that are zoned RMF-24 and Downtown General, and include various commercial businesses and the National Cemetery. Additionally, these uses would be consistent with the City Neighborhood Area land use designation, which encourages a denser and primarily residential urban fabric. However, it is staff's opinion that the RMF-24 zoning district in this area would permit a development form that would be contrary to the City's adopted land use planning objectives and principles of City Plan 2025. City Plan 2025 encourages pedestrian-friendly buildings with entrances that address the street, utilizing principles of traditional residential urban design to create compatible, livable and accessible neighborhoods. This includes adequate transition to existing neighborhoods. The RMF-24 zoning district, when applied to large tracts of land, still permits the conventional, car-oriented development form that is clearly discouraged by the City's adopted goals and polices, and which would be inappropriate and incompatible with the form of development existing within this surrounding neighborhood.

The Downtown General zoning district, however, which allows by right the same residential uses as the RMF-24 zoning district, will more likely result in a development form that is consistent with the City's adopted land use planning objectives and principles of City Plan 2025. The build-to-zone and minimum building street frontage requirements of the Downtown General zoning district will ensure a traditional urban design and provide a pedestrian friendly streetscape, while also providing the potential for low-intensity nonresidential uses that in this form would be compatible with the established single-family neighborhood to the south and the higher intensity non-residential uses to the north and east.

RECOMMENDATION:
Staff recommends denial of the requested RMF-24 zoning district (RZN 09-3271 Sale Barn) based on findings stated herein, but does find that the City's adopted policies and objectives of City Plan 2025 support a Downtown General zoning district on this property.

PLANNING COMMISSION ACTION:	**Required**	**YES**	
Date: May 26, 2009	☐ **Tabled**	x **Forwarded**	☐ **Denied**
Motion: _____	**Second:** _____	**Vote:** 6-1-0	
CITY COUNCIL ACTION:	**Required**	**YES**	
	☐ **Approved**		☐ **Denied**
Date:			

INFRASTRUCTURE:

Streets: The site has access to National St, Dunn Ave. and 11th St. These are older partially

improved city streets. Street improvements will be evaluated with development submittal.

Water: Public water is available to the property. There is a 6" main along National St., Dunn Ave. and 11th St. The capacity of this main will need to be evaluated at the time of development to insure adequate flow for domestic and fire flows.

Sewer: Sanitary sewer is available to the site. There is a 6" public main along 11th St. The capacity of this line will need to be evaluated at the time of development.

Drainage: Standard improvements and requirements for drainage will be required for the development. This property is affected by the 100-year floodplain.

Police: It is the opinion of the Fayetteville Police Department that this RZN **could** substantially alter the population density, and **will** create an appreciable or undesirable increase in the load on police services. This RZN **may** create an appreciable increase in traffic danger and congestion. Concerns cited include an increase in traffic on these local streets and potential for accident/injury with the elevated traffic numbers.

Fire: This development will be protected by Engine 1 & Ladder 1 located at 303 W. Center. It is 1 mile from the station with an anticipated response time of 4 minutes to the beginning of the development. The Fire Department anticipates 39(25 EMS – 14 Fire/Other) calls for service each year after the development is completed and maximum build-out has occurred. Typically, this type of development usually takes 12 – 18 months, after the development is started, before maximum build-out and the service impact to occur. The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

CITY PLAN 2025 FUTURE LAND USE PLAN: *City Plan 2025 Future Land Use Plan designates this site as **City Neighborhood Area,** which encourages a denser and primarily residential urban fabric within a complete, compact and connected neighborhood.*

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: **Staff finds that the residential uses permitted in the RMF-24 zoning district would be compatible with the surrounding properties that are zoned RMF-24 and Downtown General, which include various commercial businesses, single and small multi-family residential units and the National Cemetery. Additionally, these uses would be consistent with the City Neighborhood Area land use designation, which encourages a denser and primarily residential**

urban fabric. However, it is staff's opinion that the RMF-24 zoning district on a relatively large tract of land would permit a development form that would be contrary to the City's adopted land use planning objectives and principles of City Plan 2025, specifically related to the surrounding established land uses.

City Plan 2025 outlines actions that will assist the City in achieving its goal to make site-sensitive, appropriate infill a priority. Action III, to develop and implement a form-based code, was taken when the City adopted the Downtown zoning districts in 2007, which were specifically designed to preserve and maintain the character of Fayetteville's older neighborhoods in and near the downtown area. Staff finds that the conventional development product of the RMF-24 zoning district will not reflect the existing community character of the surrounding neighborhood dating back to the 1930s, particularly in an area that is transitional in use, from higher intensity commercial along a busy arterial to a single-family neighborhood. The fact that the existing neighborhood are also zoned RMF complicates matters; however, it is clear that the conventional form of a multi-family development pattern is not desirable nor appropriate in this area, even if the use is.

Goal 2, to discourage suburban sprawl, and Goal 3, to make traditional town form the standard, refer specifically to the practice of separating uses. Staff finds that a rezoning action should consider the short-term as well as the long-term redevelopment potential of a property. Staff does not support utilizing a conventional zoning district that promotes the separation of uses on a property that is adjacent to the Downtown Master Plan area, the Main Street/Center zoning district, and the Downtown General zoning district.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **Staff finds that a rezoning request for the subject property is justified and needed at this time, as the I-1 zoning designation is not consistent with the City Neighborhood Area land use designation for the subject property and permits uses that are not compatible with the adjacent properties. Furthermore, land use and development has shifted significantly since the 1950 development of the subject property for the sale of livestock. However, staff finds that an appropriate rezoning request for the subject property should result in a development form that is supported by City Plan 2025.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **It is expected that the request could result in the potential for an increase in traffic compared with that allowed under the existing zoning. However, if the**

rezoning request is approved, staff and the Planning Commission will review development of the site at the time of Large Scale Development request, during which the proposed request will be expected to meet the minimum Access Management requirements of Chapter 166.08 Development and to provide street improvements to alleviate any potential detrimental impact.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: **Staff finds that the proposed zoning would not create undesirable impacts to public services, or a density that is incompatible with the surrounding area, based on a review of infrastructure, existing land uses, and the development potential of the property. The change in zoning to RMF-24 would not adversely impact public services.**

Increased load on public services were taken into consideration and recommendations from the Engineering, Fire, and Police Departments are included in this report.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

   a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

   b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **While staff finds that the uses permitted under the I-1, Light Industrial zoning district are not desirable in this location due to the surrounding residential uses, staff also finds that the development form resulting from the conventional bulk and area requirements permitted in the RMF-24 zoning district is not compatible with the existing neighborhood, platted in 1934 and developed over time with a mixture of small single- and multi-family residential types.**

Adjacent to the subject property are the Downtown Master Plan Area and the Main Street/Center zoning district to the north and the Downtown General zoning district to the east. Staff finds that extending the adjacent Downtown General zoning district would be more appropriate for the redevelopment of the subject property and would be more consistent with City Plan 2025.

RZN 09-3271: Rezoning (SALE BARN / CAMPUS CREST LLC, 562): Submitted by JORGENSEN & ASSOCIATES for property located at THE OLD WASHINGTON COUNTY SALE BARN, N & E OF 11TH AVENUE AND GOVERNMENT AVENUE. The property is zoned I-1, HEAVY COMMERCIAL/LIGHT INDUSTRIAL and contains approximately 8.87 acres. The request is to rezone the subject property to RMF-24, Residential Multi-Family 24 Units per Acre. Planner: Dara Sanders

Public water is available to the property. There is a 6" main along National St., Dunn Ave. and 11th St. The capacity of this main will need to be evaluated at the time of development to insure adequate flow for domestic and fire flows.

Sanitary sewer is available to the site. There is a 6" public main along 11th St. The capacity of this line will need to be evaluated at the time of development.

The site has access to National St, Dunn Ave. and 11th St. These are older partially improved city streets. Street improvements will be evaluated with development submittal.

Standard improvements and requirements for drainage will be required for any development. This property is not affected by the 100-year floodplain.

The City of Fayetteville Fire Department
303 W. Center St. Fayetteville, AR. 72701
Phone (479) 575-8365 Fax (479) 575-0471

To: **Dara Sanders, Andrew Garner, Jeremy Pate, and Jesse Fulcher**

From: **David Williams**

Date: **May 19, 2009**

Re: **RZN 09-3271: Rezoning (SALE BARN / CAMPUS CREST LLC, 562)**

This development will be protected by Engine 1 & Ladder 1 located at 303 W. Center. It is 1 miles from the station with an anticipated response time of 4minutes to the beginning of the development.
The Fire Department anticipates 39(25 EMS – 14 Fire/Other) calls for service each year after the development is completed and maximum build-out has occurred. Typically, this type of development usually takes 12 – 18 months, after the development is started, before maximum build-out and the service impact to occur.
The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

If you have any questions please feel free to contact me.

Fire Marshal
Fayetteville Fire Department

Date 5/19/09

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request for comments on proposed R-PZD 09-3271 (Sale Barn / Campus Crest LLC, 562) Submitted by Jorgensen & Associates for property located at the old Washington County Sale Barn, N & E of 11th Street and Government Avenue.

It is the opinion of the Fayetteville Police Department that this RZN could substantially alter the population density, and will create an appreciable or undesirable increase in the load on police services. This RZN may create an appreciable increase in traffic danger and congestion in the area.

Sincerely,

Captain William Brown
Fayetteville Police Department

JORGENSEN & ASSOCIATES
CIVIL ENGINEERS • SURVEYORS

124 WEST SUNBRIDGE, SUITE 5 • FAYETTEVILLE, ARKANSAS 72703 • (479) 442-9127 • FAX (479) 582-4807
DAVID L. JORGENSEN, P.E., P.L.S.

3/30/09

City of Fayetteville
113 W. Mountain Street
Fayetteville, AR 72701

Attn: Planning Department
Re: Rezoning of Washington County Sale Barn

Attached please find the application and documents for the rezoning of a part of what is presently called the Washington County Sale Barn. This property is located east of Government Street and North 11th Street. A portion of this property is RMF-24 and the remainder is I-1 which is the portion that we are requesting to be rezoned to RMF-24. There is an existing 6" waterline on 11th Street, Dunn Avenue and Government Avenue. There is an existing 8" sewer on Government and also to the north there is an existing 8" sewer. Access to this property is by 11th Street, Dunn Avenue and Government Avenue. Property to the east is zoned Downtown General, to the south is I-1 and RMF-24, to the west is the National Cemetery (RMF-24) and to the north is MSC.

Please call concerning any questions you may have.

Thank you.

Sincerely;

David L. Jorgensen, P.E.

From: Andrew Garner
To: Sanders, Dara
CC: Monreal, Cindy
Date: 4/20/2009 1:18 PM
Subject: Fwd: [Form mail from AccessFayetteville] - Apartments/Student housingproposals

Dara,
Please print this comments and place in the RZN file for the sale barn.

Cindy,
Please respond to this comment and let the person know that we will review their comments and also share them with the Planning Commission when the requested rezoning on the property is heard at a public hearing.

Thanks,
Andrew

Andrew M. Garner
Senior Planner
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701

Tel.479.575.8262
Fax.479.575.8202
agarner@ci.fayetteville.ar.us
www.accessfayetteville.org

>>> Planning 4/16/2009 1:52 PM >>>
Hi Andrew,
I got this one and I know we do not handle this side of it, but was not sure how to answer it.
Could you advise?
Cin

>>> <haletownhill@yahoo.com> 4/15/2009 12:34 PM >>>

From: Scott Hill
Email: haletownhill@yahoo.com
To: planning@ci.fayetteville.ar.us
Subject: Apartments/Student housing proposals

Public comment

Message:

Hello:

I am aware of the proposed "student housing" apartment complex for the site of the sale barn in south Fayetteville.

I am not opposed to student housing, or apartments, but I am opposed to the way they are built in Fayetteville.

Please take a look at the Cotton District which is adjacent to Mississippi State University in Starkville, Mississippi. Here is a link:
http://www.thecottondistrict.net/photos.php

Please take a look at this. It is so great. And its an example of how student oriented, studio and 1 and 2 br apartments can be made into a valued part of the community, rather than a walled-off, generic, depressing fortress.

The Cotton District has become so popular, that it is home to city festivals, art walks, etc.

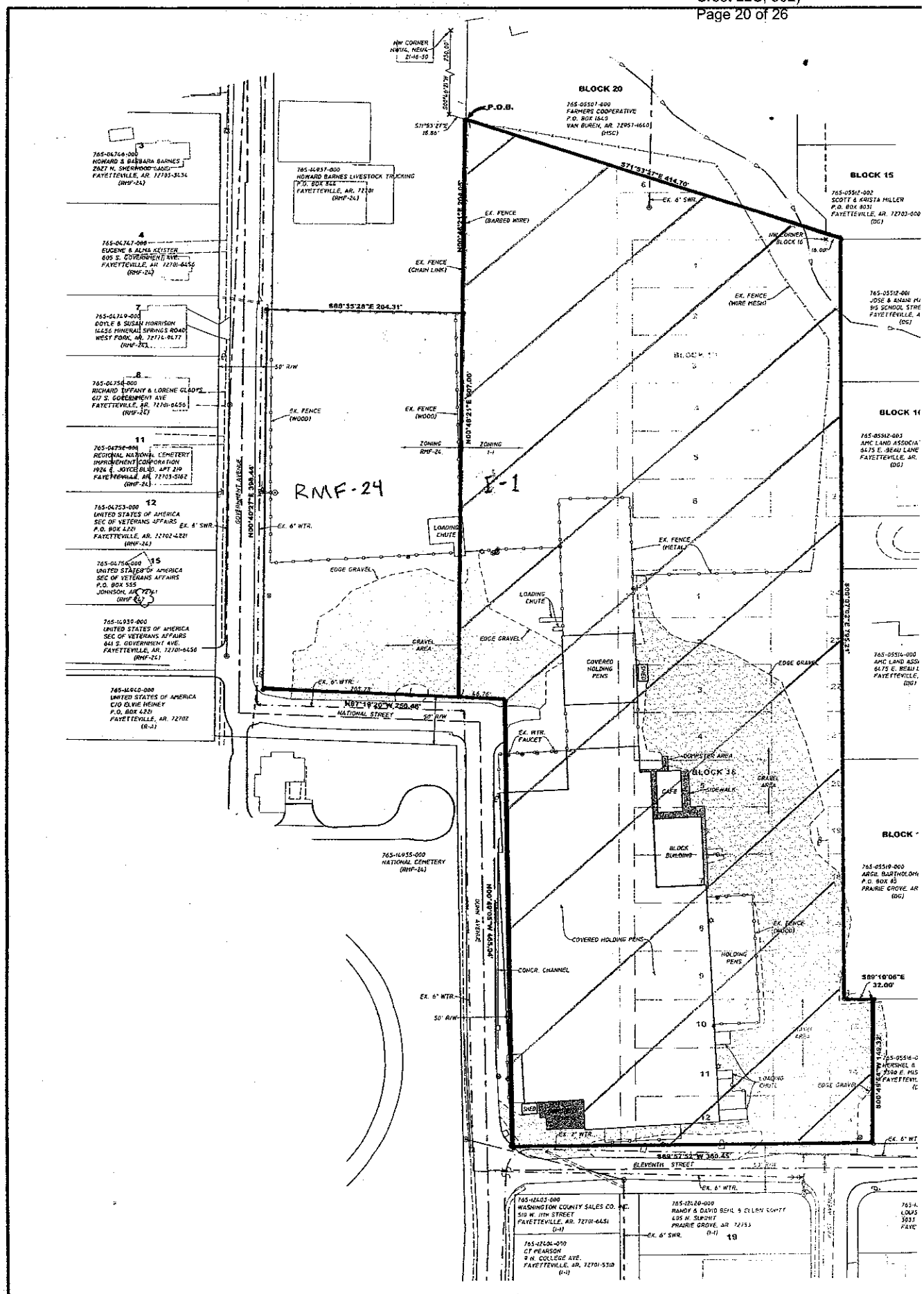
http://www.tndtownpaper.com/Volume4/new_towns_cotton_district.htm

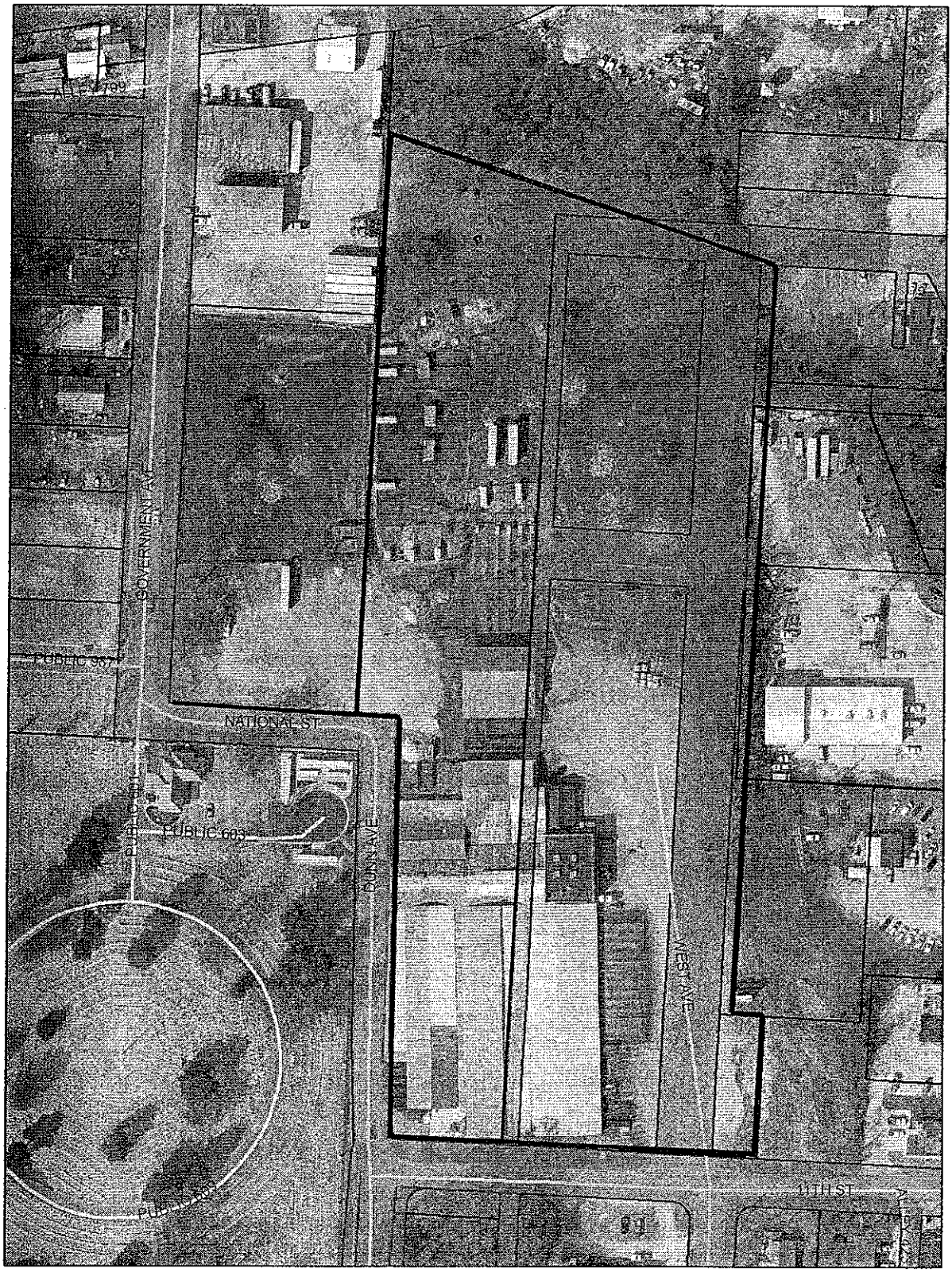
Google "Dan Camp" and "Cotton District" for research.

I really see how the areas north of the campus, along Leverett, and the areas to the south could be transitioned into something wonderful like The Cotton District with the proper planning.

Thanks for your hard work to make our city better.

Scott


RMF-24
I-1
BLOCK 20
BLOCK 38
BLOCK 15
P.O.B.
S71°53'27"E 414.70'
S88°55'28"E 204.31'
N00°40'21"E 207.00'
N00°40'21"E 398.44'
N87°19'20"W 250.66'
S88°52'52"W 340.45'
N00°48'08"W 405.54'
S89°10'06"E 32.00'
50' R/W
EX. FENCE (BARBED WIRE)
EX. FENCE (CHAIN LINK)
EX. FENCE (WOOD)
EX. FENCE (WIRE MESH)
EX. FENCE (METAL)
EX. 6" WTR.
EX. 4" SWR.
EX. 6" SWR.
EX. 8" WTR.
EX. 2" WTR.
EDGE GRAVEL
GRAVEL AREA
LOADING CHUTE
COVERED HOLDING PENS
HOLDING PENS
DUMPSTER AREA
CAFE
SIDEWALK
BLOCK BUILDING
CONCR. CHANNEL
SHED
GOVERNMENT AVENUE
DUNN AVENUE
NATIONAL STREET
ELEVENTH STREET
765-04746-000
HOWARD & BARBARA BARNES
2627 N. SHERWOOD LANE
FAYETTEVILLE, AR. 72703-3134
(RMF-24)
765-04747-000
EUGENE & ALMA KEISTER
605 S. GOVERNMENT AVE.
FAYETTEVILLE, AR. 72701-6456
(RMF-24)
765-04749-000
DOYLE & SUSAN HORRISON
14250 MINERAL SPRINGS ROAD
WEST FORK, AR. 72774-9477
(RMF-24)
765-04750-000
RICHARD TIFFANY & LORENE GLADYS
617 S. GOVERNMENT AVE
FAYETTEVILLE, AR. 72701-6456
(RMF-24)
765-04756-000
REGIONAL NATIONAL CEMETERY IMPROVEMENT CORPORATION
1924 E. JOYCE BLVD. APT 219
FAYETTEVILLE, AR. 72703-5162
(RMF-24)
765-04753-000
UNITED STATES OF AMERICA
SEC OF VETERANS AFFAIRS
P.O. BOX 4221
FAYETTEVILLE, AR. 72702-4221
(RMF-24)
765-04754-000
UNITED STATES OF AMERICA
SEC OF VETERANS AFFAIRS
P.O. BOX 555
JOHNSON, AR. 72741
(RMF-24)
765-14939-000
UNITED STATES OF AMERICA
SEC OF VETERANS AFFAIRS
641 S. GOVERNMENT AVE.
FAYETTEVILLE, AR. 72701-6458
(RMF-24)
765-14940-000
UNITED STATES OF AMERICA
C/O ELVIE HEINEY
P.O. BOX 4231
FAYETTEVILLE, AR. 72702
(R-A)
765-14955-000
NATIONAL CEMETERY
(RMF-24)
765-14937-000
HOWARD BARNES LIVESTOCK TRUCKING
P.O. BOX 344
FAYETTEVILLE, AR. 72701
(RMF-24)
765-05507-000
FARMERS COOPERATIVE
P.O. BOX 1643
VAN BUREN, AR. 72957-4643
(I-1SC)
765-05512-002
SCOTT & KRISTA MILLER
P.O. BOX 8031
FAYETTEVILLE, AR. 72703-0008
(DG)
765-05512-001
JOSE & ANAIR M
915 SCHOOL STRE
FAYETTEVILLE, A
(DG)
765-05512-003
AMC LAND ASSOCIA
6475 E. BEAU LANE
FAYETTEVILLE, AR.
(DG)
765-05514-000
AMC LAND ASSO
6475 E. BEAU L
FAYETTEVILLE,
(DG)
765-05519-000
ARGE. BARTHOLOM
P.O. BOX 85
PRAIRIE GROVE, AR
(DG)
765-12403-000
WASHINGTON COUNTY SALES CO. INC.
510 W. 11TH STREET
FAYETTEVILLE, AR. 72701-6451
(I-1)
765-12420-000
RANDY & DAVID BEHL & ELLEN CONTY
605 N. SUMMIT
PRAIRIE GROVE, AR 72753
(I-1)
765-12404-000
CT PEARSON
9 N. COLLEGE AVE.
FAYETTEVILLE, AR. 72701-5310
(I-1)
19

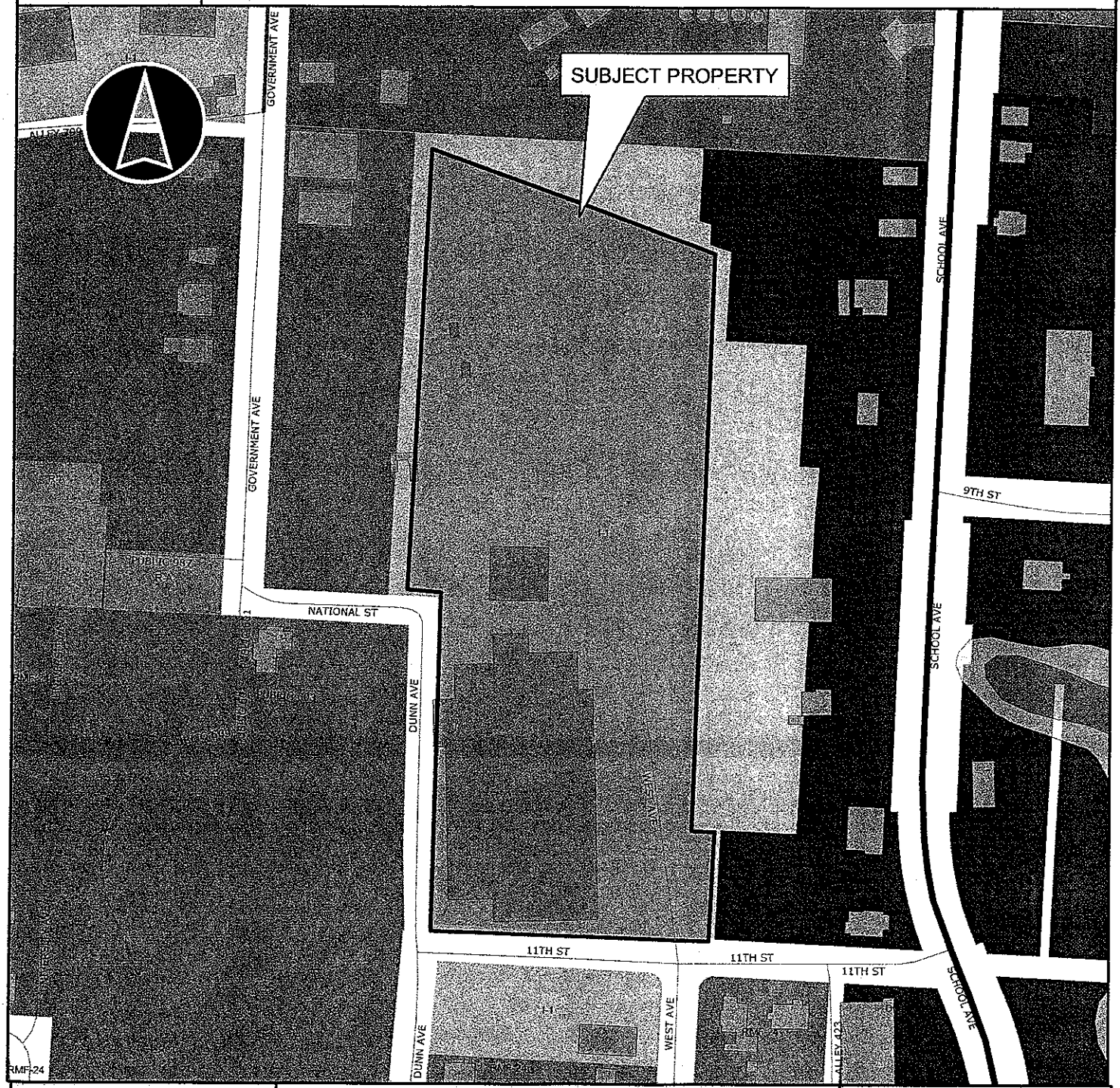

GOVERNMENT AVE
NATIONAL ST
PUBLIC 603
PUBLIC 967
PUBLIC 969
PUBLIC 968
GUN AVE
WEST AVE
11TH ST

RZN 09-3271 (Sale Barn)

RZN09-3271

Close Up View

SALE BARN/ CAMPUS CREST LLC



Overview

0 75 150 300 450 600 Feet

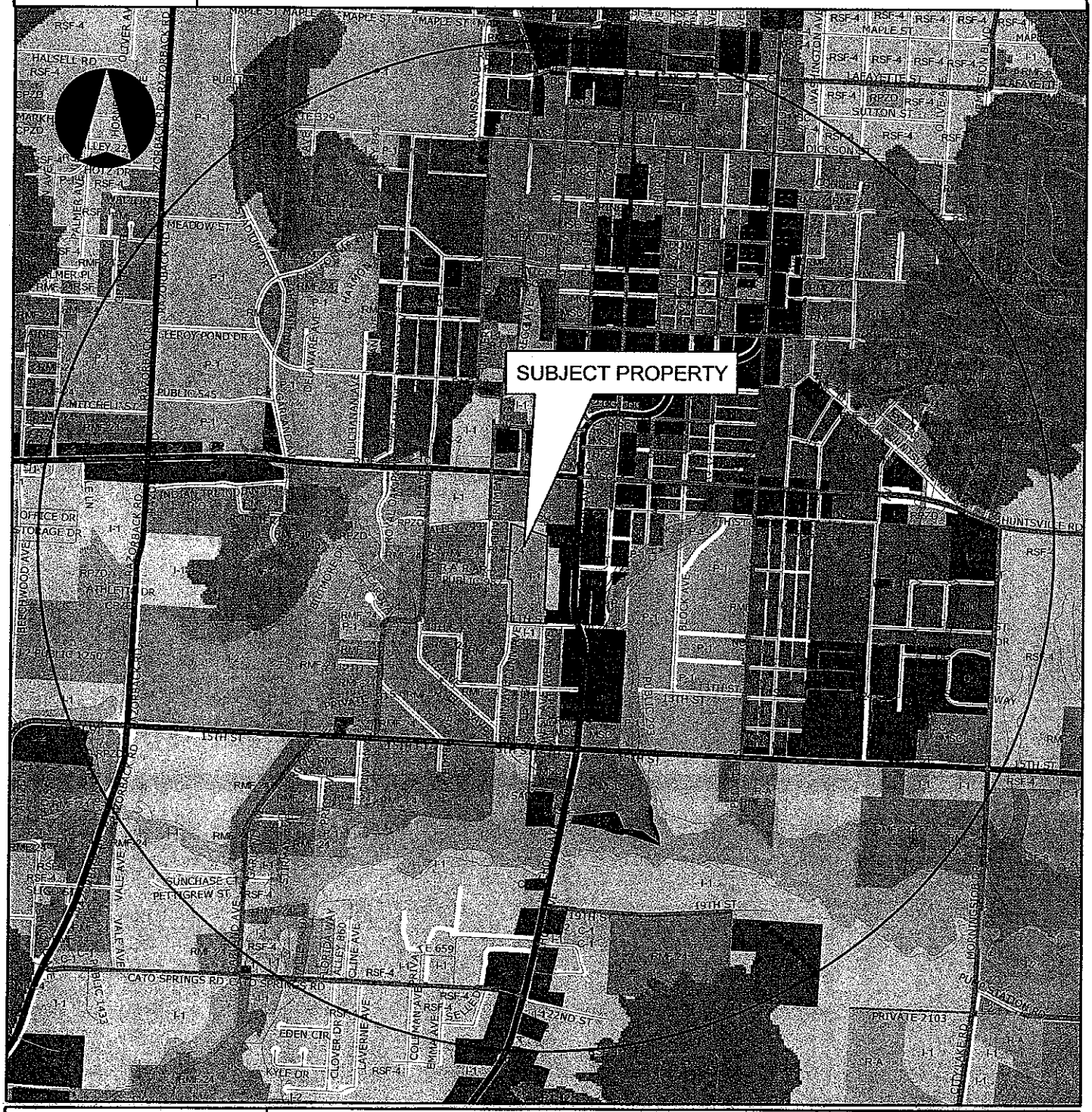
Legend

- RZN09-3271
- 0.2% Chance Floodplain (500 - yr Floodplain)
- Zone A, 1% Chance Floodplain (100 - yr Floodplain)
- Zone AE, 1% Chance Floodplain (100 - yr Floodplain)
- 2007 Footprints
- Design Overlay District
- Fayetteville
- Planning Area
- Fayetteville

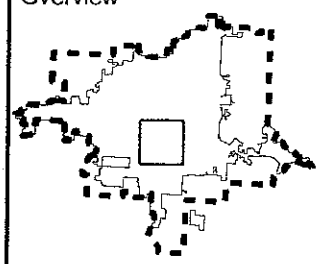
RZN09-3271

One Mile View

SALE BARN/ CAMPUS CREST LLC



Overview



Legend

Subject Property

RZN09-3271

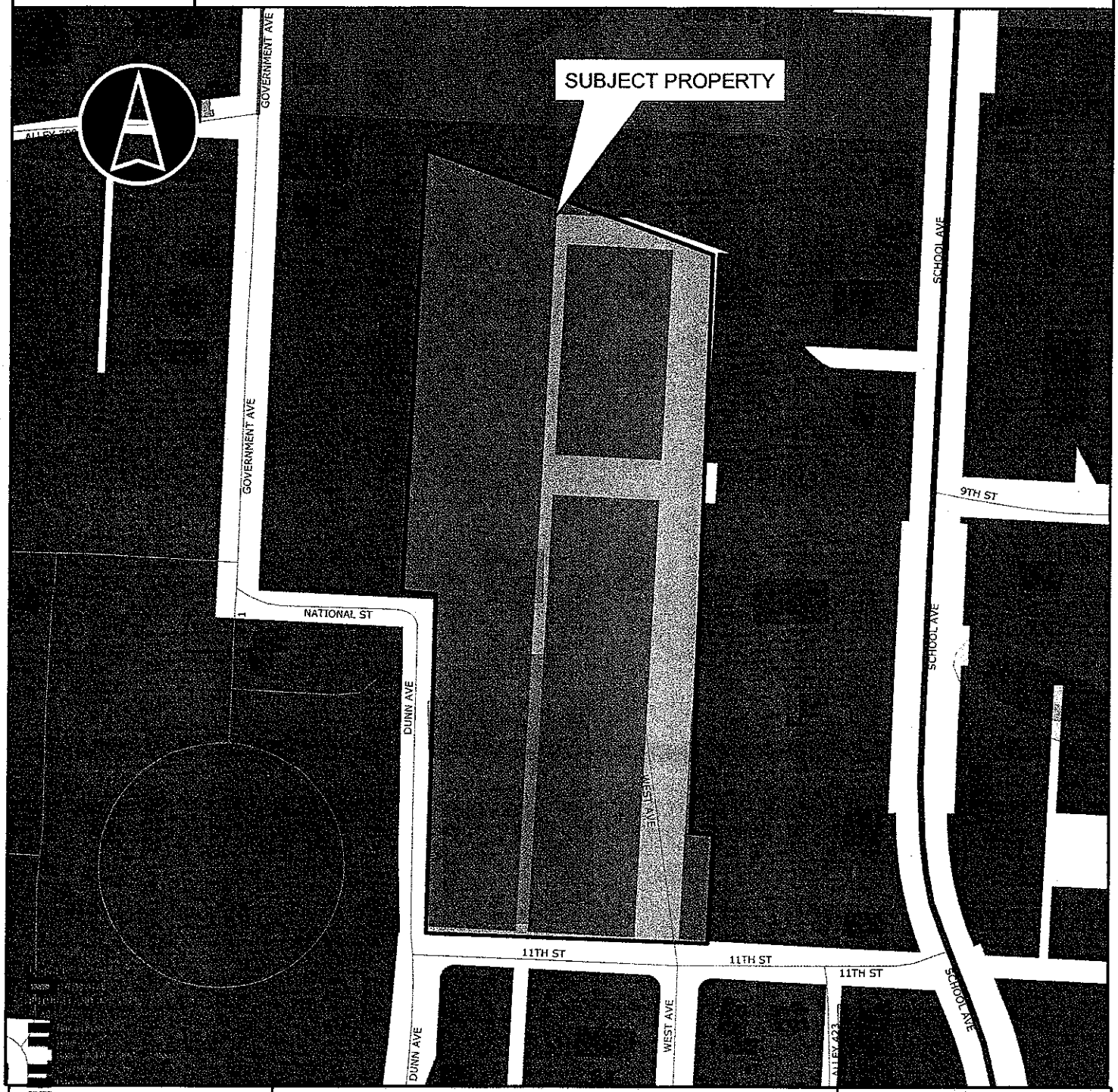
Boundary

0 0.25 0.5 1 Miles

RZN09-3271

Future Land Use

SALE BARN/ CAMPUS CREST LLC



Overview

- Industrial
- Civic and Private Open Space/Parks
- Civic Institutional
- Non-Municipal Government
- ROW
- 0.2% Chance Floodplain (500 - yr Floodplain)
- Zone A, 1% Chance Floodplain (100 - yr Floodplain)
- Zone AE, 1% Chance Floodplain (100 - yr Floodplain)
- 2007 Footprints
- Design Overlay District
- Planning Area
- Fayetteville

0 75 150 300 450 600 Feet

H2 ENGINEERING, INC.

RECEIVED
MAY 29 2009
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

May 28, 2009

City of Fayetteville
Attn: City Clerk
113 West Mountain St.
Fayetteville, AR 72701

RE: REZONING APPLICATION
PLANNING COMMISSION APPEAL
NORTHWEST CORNER OF HWY 45 & BOX AVE

Dear Council Members:

Please accept this letter and associated Bill of Assurance as our official request for appeal of a rezoning application which was recently denied by a 5-3 vote at Planning Commission on May 26, 2009. This appeal is warranted because we did not have the completed Bill of Assurance for the Planning Commissioners to review prior to the meeting. Conversely, we simply made our request for the Bill of Assurance as a matter of record and may not have clearly expressed our intentions.

The subject property is owned by Mathias Shopping Centers, Inc. and is located at the northwest corner of Arkansas State Highway 45 and Box Avenue. The subject property is currently zoned R-O and is proposed for rezoning to C-1, Neighborhood Commercial. The reason for the rezoning is to propose a large scale development for the site which would include a bakery utilizing a drive-thru window and provide an opportunity for other low impact neighborhood services. The property to the north of our site is zoned RSF-4 (with a conditional use allowing a duplex) and the property to the east is zoned RSF-4 and P-1, elementary school. ***The property to the west is zoned C-1 with a convenience store operation. The property to the south is zoned C-2 Thouroughfare Commercial with numerous commercial activities.*** This is a corner lot with ***over 200 ft of frontage along Hwy 45*** and 200 ft of frontage along Box Rd.

THE REASON FOR THIS REZONING APPLICATION IS TO SIMPLY ACCOMMODATE A BAKERY or EATING PLACE AT THIS LOCATION *WITH A DRIVE THRU WINDOW*. The only avenues to gain approval for a bakery and drive thru window are the following: (1) Rezone to C-1 Neighborhood Commercial; or (2) Submit a PZD specifying the intended use. We do not believe the PZD ordinance was intended for this application.

It is our impression that Planning Staff is restricted by the Zoning Districts and Use Units currently available. I understand an effort is underway to develop additional Zoning Districts and more specific Use Units, but they are not available for our discussion today. ***The addition of***

left on First Reading 2 4th 6/16/09 CCmtg

a drive thru window for a bakery or eating establishment automatically classifies this use as Use Unit 18, which is defined as "Gasoline service stations and drive-in restaurants". There is no comparison to the intensity of a Gas Station vs a bakery. Therefore, we offer the Bill of Assurance to restrict Use Unit 18 to only include a drive-in restaurant (which is still quite different than a drive-thru window for a bakery).

The proposed bakery will not be successful at this location without a drive thru window to offer conveniences for mothers with small children, people with physical limitations, etc… It is simply part of today's business model for eating establishments. We believe the restrictions offered in the associated Bill of Assurance will limit the intensity of the zoning and make it a compatible use for that area. The Bill of Assurance limits the number of drive thru restaurant tenants to one (1) for this commercial development.

All public infrastructure is adequate and accessible. Water is available via an 8" PVC line on the south boundary, and sewer is available via an 8" line on the west boundary.

Planning staff have voiced their concern with regard to traffic conditions in this locale based on input by the Police representatives. Any traffic associated with this development would be miniscule in relation to the existing conditions. However, **the current traffic congestion will improve in approximately one month as a result of the installation of a traffic signal at the corner of Hwy 45 and Starr Rd to our east.**

We understand this parcel is designated as a City Neighborhood Area on the City Plan 2025. The fact that this parcel is within 150 feet of one of the busiest intersections in town and has over 200 ft of frontage on Hwy 45, we believe this parcel is not only deserving of the "low-intensity nonresidential uses" identified in the City Neighborhood Area description, but is also deserving of the use units available within C-1 Neighborhood Commercial. Unfortunately, there is not another zoning available to us between R-O and C-1. Therefore, we believe the Bill of Assurance is a nice compromise between the two zoning districts.

Thank you for your consideration in this regard.

Respectfully,

Kipp Hearne, P.E.
President
H2 Engineering, Inc.

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") Mathias Shopping Centers, Inc., hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Circuit Court of Washington County and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, **substantial irreparable damage justifying injunctive relief** has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will **reasonably rely** upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows **IF** Petitioner's rezoning is approved by the Fayetteville City Council.

1. The use of Petitioner's property shall be limited to the zoning criteria identified in Section 161.17 - District C-1, Neighborhood Commercial with the following exceptions: (1) Modification to Use Unit 18 to reflect only a "Drive In Restaurant" as a permitted use (Gasoline service stations will not be permitted in any capacity), (2) Removal of Use Unit 34 Liquor Store from the Conditional Use section, and (3) Removal of Use Unit 35 Outdoor Music Establishments from the Conditional Use section.

2. Other restrictions including number and type of structures upon the property are limited to the following: The maximum number of users operating under Use Unit 18 on the subject property at one time shall be limited to one (1).

3. Specific activities will not be allowed upon petitioner's property include the following: N/A.

4. No other terms or conditions are applicable to this rezoning request.

5. Petitioner specifically agrees that all such restrictions and terms shall **run with the land** and bind all future owners unless and until specifically released by Resolution of the

Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, Sam Mathias, as the owner, developer or buyer (Petitioner) **voluntarily offer** all such assurances and sign my name below.

MAY 29TH 2009
Date

SAM MATHEAS
Printed Name

5571 Bleasy Ave.
Address
Springdale, Ark. 72762

Sam Mathias
Signature

NOTARY OATH

STATE OF ARKANSAS }
Madison } **.ss**
COUNTY OF ~~WASHINGTON~~ }

And now on this the 29 day of May, 2009, appeared before me, Sam Mathias, a Notary Public, and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

Becky Crumley
NOTARY PUBLIC

OFFICIAL SEAL
BECKY CRUMLEY
NOTARY PUBLIC . ARKANSAS
MADISON COUNTY
COMMISSION # 12348560
COMMISSION EXP. 06/01/2016

My Commission Expires:

June 1, 2016

City Council Meeting of June 16, 2009
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Operations

From: Jeremy C. Pate, Director of Development Services

Date: May 29, 2009

Subject: Appeal for Box Avenue (RZN 09-3280)

RECOMMENDATION

The Planning Commission voted to deny the subject request to rezone the property from R-O, Residential Office to C-1, Neighborhood Commercial with a vote of 5-3-0 (Commissioners Kennedy, Honchell, and Myres voting "no"). Minutes from the meeting are included in this packet. The applicant has submitted an appeal of the Planning Commission decision (see attached letter).

BACKGROUND

The subject property contains approximately 1.20 acres and is located north of Highway 45 (Mission Boulevard/) and east of Highway 265 (Crossover Road) at the northwest corner of the intersection of Box Avenue and Mission Boulevard. Currently, Box Avenue (Local Street) is not constructed to City standards. The platted cul-de-sac was not constructed, and the street ends at two residential driveways. The Planning Division has reviewed multiple requests for the subject property, including two rezoning requests for the C-1 zoning district, dating back to 2003.

In July 2003, the previous property owner submitted a request (RZN 03-29.00) to rezone the subject property from RSF-4, Residential Single-Family, 4 units/acre to C-1, Neighborhood Commercial. Staff recommended denial of the request, finding that the request was not consistent with the Residential land use designation in the General Plan 2020, that the request was not justified due to an existing vacant property located within the immediate vicinity, and that the request would create an increase in traffic danger and congestion in the area. The applicant withdrew the request prior to the scheduled Planning Commission hearing.

In June 2005, Mathias Shopping Centers, Inc., the current owner of the subject property, submitted a new rezoning application (RZN 05-1546) to the Planning Division, requesting to rezone the subject property from RSF-4, Residential Single-family, 4 units/acre to C-1, Neighborhood Commercial. Staff was not supportive of the request but recommended in favor of the R-O, Residential Office zoning district, finding that R-O was consistent with the Residential land use designation and provided a transitional zoning district from the heavier commercial uses and residential uses behind. The City Council voted 9-0 to rezone the property to R-O but expressed some reservations about the future use of the property (see attached City Council minutes).

In 2006, the City Council adopted City Plan 2025, which changed the land use designation of the subject property from Residential to City Neighborhood Area, which encourages low-intensity nonresidential uses located at corner locations. On September 13, 2007, the Subdivision Committee approved the applicant's Large Scale Development (LSD 07-2713) request to construct a one-story office building containing 19,209 square feet with 33 parking spaces on the subject property. Building permits were not obtained within one year of the approval date, and the project expired.

The applicant has submitted a new request to the Planning Division and again proposes to rezone the property from R-O, Residential Office to C-1, Neighborhood Commercial, stating that the reason for the rezoning request is to propose a large scale development on the subject property to include a bakery with a drive-thru window. Currently, Use Unit 18 (Gasoline service stations & drive-in restaurants) is not a permitted or conditional use in the R-O zoning district.

DISCUSSION

Staff finds that the applicant could request conditional use approval from the Planning Commission with the existing underlying zoning district in place to allow for Use Unit 13 (Eating Places) to operate a bakery on the subject property. Staff does not find that the inclusion of a drive-thru window warrants approval of a rezoning request to C-1, Neighborhood Commercial, which would allow for a gasoline station, drive-thru fast food restaurant, or a strip commercial shopping center adjacent to the existing two-family dwellings to the north.

In addition, staff finds that limiting the nonresidential uses on the subject property to low-intensity and low traffic generators making turning movements onto Highway 45 is necessary to ensure compatibility with the adjacent residential properties and to promote traffic safety at this location. The Fayetteville Police Department has commented on the potential for traffic danger as a result of nonresidential development on this site in the past. The recently adopted Access Management Standards could promote a safer driving environment at this location due to curb cut and turning movement controls; however, staff is concerned with the lack of cross access potential and the lack of street connectivity in the immediate vicinity. The introduction of a much higher number of turning movements due to the intersection of Highway 45 and 265 and the adjacent school will likely result in increased traffic congestion.

Additionally, staff finds that the C-1 zoning district at this location is not consistent with the Future Land Use designation of City Neighborhood Area, which is intended to promote the use of low-intensity non-residential uses at corner locations. Staff finds that many of the permitted uses included in the C-1 zoning district are not low-intensity uses that will have a minimal impact on adjacent residential uses.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 09-3280, FOR APPROXIMATELY 1.20 ACRES, LOCATED AT THE NORTHWEST CORNER OF MISSION BOULEVARD AND BOX AVENUE FROM R-O, RESIDENTIAL OFFICE, TO C-1, NEIGHBORHOOD COMMERCIAL

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the zone classification of the following described property is hereby changed as follows:

From R-O, Residential Office to C-1, Neighborhood Commercial, as shown and described on attached exhibits "A" and "B".

Section 2: That the rezoning of the subject property is subject to the Bill of Assurance offered by the applicant as shown in Exhibit "C" attached hereto and made a part hereof.

Section 3: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and **APPROVED** this day of , 2009.

APPROVED: ATTEST:

By: _____ By: _____

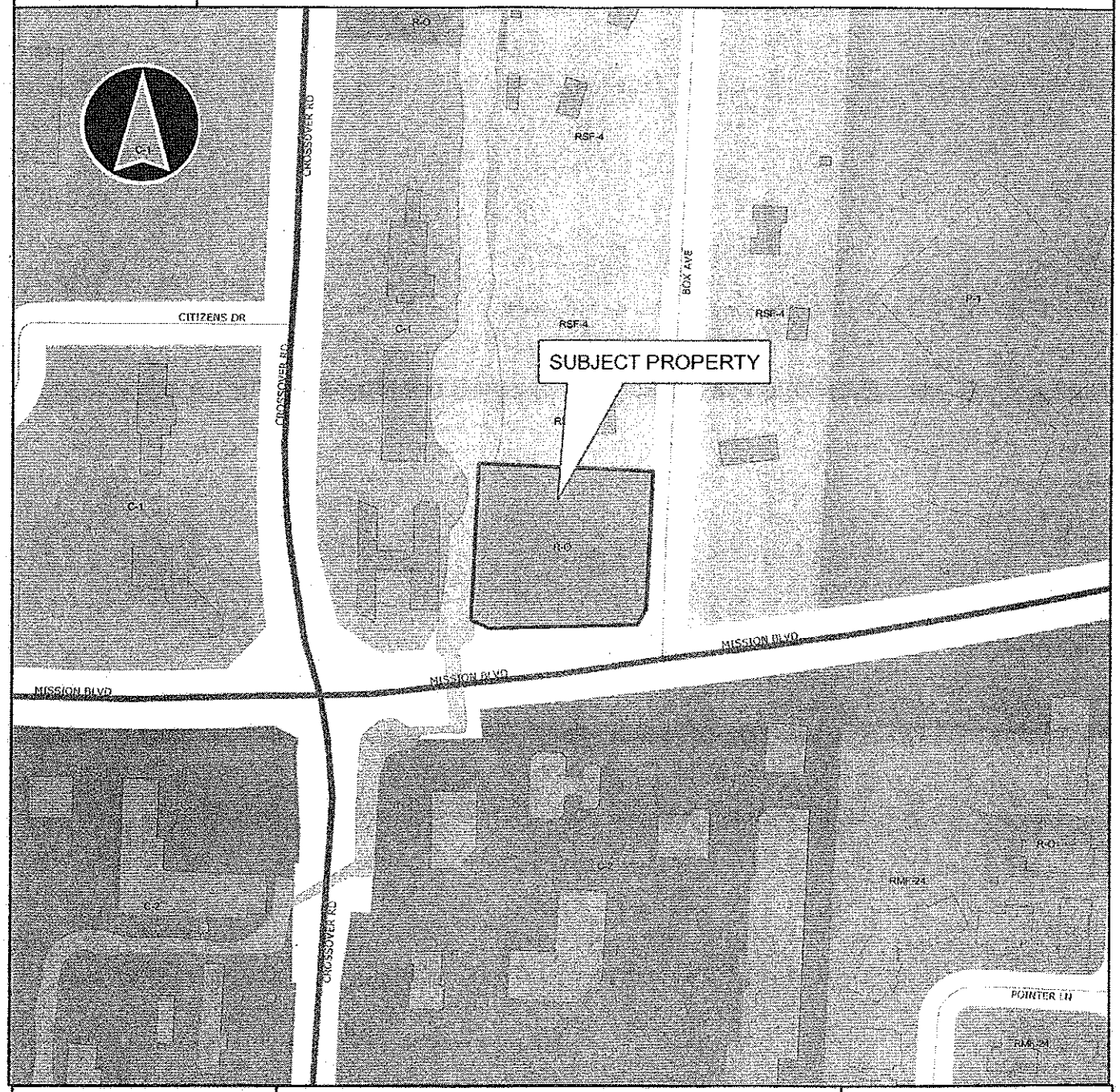
LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

EXHIBIT "A"

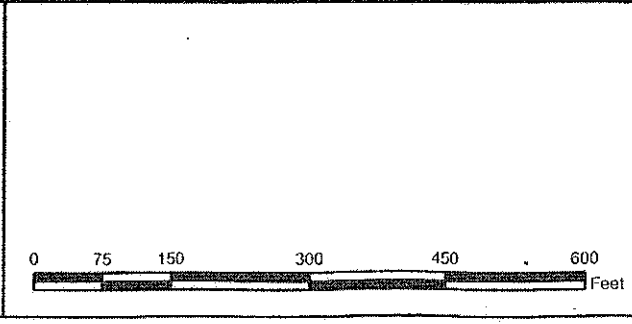
RZN09-3280

Close Up View

MATHIAS/ NW CRNR MISSION & BOX



Overview



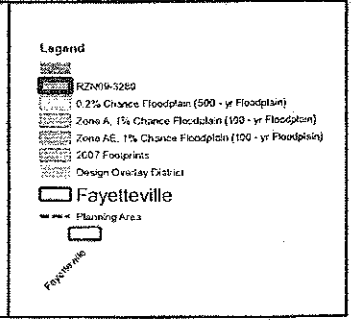


EXHIBIT "B"
RZN 09-3280

PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 1, TOWNSHIP 16 NORTH, RANGE 30 WEST OF THE FIFTH PRINCIPLE MERIDIAN, CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 1 OF BRADEN ADDITION RECORDED AS FILE #4-239 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS BEING A FOUND 5/8" REBAR; THENCE S02°33'58"W, ALONG THE WEST RIGHT-OF-WAY LINE OF BOX AVENUE, A DISTANCE OF 116.00 FEET TO A SET 5/8" REBAR W/CAP (PS 1496) BEING THE TRUE POINT OF BEGINNING; THENCE S02°33'58"W, CONTINUING ALONG THE WEST RIGHT-OF-WAY LINE OF BOX AVENUE, A DISTANCE OF 193.66 FEET TO A SET 5/8" REBAR W/CAP (PS 1496) ON THE NORTH RIGHT-OF-WAY LINE OF ARKANSAS HIGHWAY 45; THENCE S29°12'54"W, ALONG THE ABOVE SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 21.81 FEET TO A SET 5/8" REBAR W/CAP (PS 1496); THENCE S88°29'41"W, CONTINUING ALONG THE ABOVE SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 204.97 FEET TO A SET 5/8" REBAR W/CAP (PS 1496); THENCE N62°52'57"W, CONTINUING ALONG THE ABOVE SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 27.65 FEET TO A SET 5/8" REBAR W/CAP (PS 1496); THENCE N02°33'58"E, LEAVING THE ABOVE SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 215.95 FEET; THENCE S87°29'50"E, A DISTANCE OF 239.39 FEET TO THE POINT OF BEGINNING AND CONTAINING 52,607 SQUARE FEET OR 1.21 ACRES, MORE OR LESS. SUBJECT TO ANY AND ALL EASEMENTS, COVENANTS, RESTRICTIONS, AND/OR RIGHTS-OF-WAY OF RECORD OR PRESCRIPTION.

EXHIBIT "C"

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") Mathias Shopping Centers, Inc., hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Circuit Court of Washington County and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, **substantial irreparable damage justifying injunctive relief** has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will **reasonably rely** upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows **IF** Petitioner's rezoning is approved by the Fayetteville City Council.

1. The use of Petitioner's property shall be limited to the zoning criteria identified in Section 161.17 - District C-1, Neighborhood Commercial with the following exceptions: (1) Modification to Use Unit 18 to reflect only a "Drive In Restaurant" as a permitted use (Gasoline service stations will not be permitted in any capacity), (2) Removal of Use Unit 34 Liquor Store from the Conditional Use section, and (3) Removal of Use Unit 35 Outdoor Music Establishments from the Conditional Use section.

2. Other restrictions including number and type of structures upon the property are limited to the following: The maximum number of users operating under Use Unit 18 on the subject property at one time shall be limited to one (1).

3. Specific activities will not be allowed upon petitioner's property include the following: N/A.

4. No other terms or conditions are applicable to this rezoning request.

5. Petitioner specifically agrees that all such restrictions and terms shall **run with the land** and bind all future owners unless and until specifically released by Resolution of the

EXHIBIT "C"

Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, Sam Mathias, as the owner, developer or buyer (Petitioner) **voluntarily offer** all such assurances and sign my name below.

MAY 29TH 2009
Date

SAM MATHEAS
Printed Name

5571 Bleasy Ave.
Address
Springdale, Ark. 72762

Sam Mathias
Signature

NOTARY OATH

STATE OF ARKANSAS }
Madison } .ss
COUNTY OF ~~WASHINGTON~~ }

And now on this the 29 day of May, 2009, appeared before me, Sam Mathias, a Notary Public, and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

Becky Crumley
NOTARY PUBLIC

OFFICIAL SEAL
BECKY CRUMLEY
NOTARY PUBLIC . ARKANSAS
MADISON COUNTY
COMMISSION # 12348560
COMMISSION EXP. 06/01/2016

My Commission Expires:

June 1, 2016

H2 ENGINEERING, INC.

RECEIVED
MAY 29 2009
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

May 28, 2009

City of Fayetteville
Attn: City Clerk
113 West Mountain St.
Fayetteville, AR 72701

RE: REZONING APPLICATION
PLANNING COMMISSION APPEAL
NORTHWEST CORNER OF HWY 45 & BOX AVE

Dear Council Members:

Please accept this letter and associated Bill of Assurance as our official request for appeal of a rezoning application which was recently denied by a 5-3 vote at Planning Commission on May 26, 2009. This appeal is warranted because we did not have the completed Bill of Assurance for the Planning Commissioners to review prior to the meeting. Conversely, we simply made our request for the Bill of Assurance as a matter of record and may not have clearly expressed our intentions.

The subject property is owned by Mathias Shopping Centers, Inc. and is located at the northwest corner of Arkansas State Highway 45 and Box Avenue. The subject property is currently zoned R-O and is proposed for rezoning to C-1, Neighborhood Commercial. The reason for the rezoning is to propose a large scale development for the site which would include a bakery utilizing a drive-thru window and provide an opportunity for other low impact neighborhood services. The property to the north of our site is zoned RSF-4 (with a conditional use allowing a duplex) and the property to the east is zoned RSF-4 and P-1, elementary school. ***The property to the west is zoned C-1 with a convenience store operation. The property to the south is zoned C-2 Thouroughfare Commercial with numerous commercial activities.*** This is a corner lot with ***over 200 ft of frontage along Hwy 45*** and 200 ft of frontage along Box Rd.

THE REASON FOR THIS REZONING APPLICATION IS TO SIMPLY ACCOMMODATE A BAKERY or EATING PLACE AT THIS LOCATION *WITH A DRIVE THRU WINDOW*. The only avenues to gain approval for a bakery and drive thru window are the following: (1) Rezone to C-1 Neighborhood Commercial; or (2) Submit a PZD specifying the intended use. We do not believe the PZD ordinance was intended for this application.

It is our impression that Planning Staff is restricted by the Zoning Districts and Use Units currently available. I understand an effort is underway to develop additional Zoning Districts and more specific Use Units, but they are not available for our discussion today. ***The addition of***

a drive thru window for a bakery or eating establishment automatically classifies this use as Use Unit 18, which is defined as "Gasoline service stations and drive-in restaurants". There is no comparison to the intensity of a Gas Station vs a bakery. Therefore, we offer the Bill of Assurance to restrict Use Unit 18 to only include a drive-in restaurant (which is still quite different than a drive-thru window for a bakery).

The proposed bakery will not be successful at this location without a drive thru window to offer conveniences for mothers with small children, people with physical limitations, etc… It is simply part of today's business model for eating establishments. We believe the restrictions offered in the associated Bill of Assurance will limit the intensity of the zoning and make it a compatible use for that area. The Bill of Assurance limits the number of drive thru restaurant tenants to one (1) for this commercial development.

All public infrastructure is adequate and accessible. Water is available via an 8" PVC line on the south boundary, and sewer is available via an 8" line on the west boundary.

Planning staff have voiced their concern with regard to traffic conditions in this locale based on input by the Police representatives. Any traffic associated with this development would be miniscule in relation to the existing conditions. However, **the current traffic congestion will improve in approximately one month as a result of the installation of a traffic signal at the corner of Hwy 45 and Starr Rd to our east.**

We understand this parcel is designated as a City Neighborhood Area on the City Plan 2025. The fact that this parcel is within 150 feet of one of the busiest intersections in town and has over 200 ft of frontage on Hwy 45, we believe this parcel is not only deserving of the "low-intensity nonresidential uses" identified in the City Neighborhood Area description, but is also deserving of the use units available within C-1 Neighborhood Commercial. Unfortunately, there is not another zoning available to us between R-O and C-1. Therefore, we believe the Bill of Assurance is a nice compromise between the two zoning districts.

Thank you for your consideration in this regard.

Respectfully,

Kipp Hearne, P.E.
President
H2 Engineering, Inc.

PC Meeting of May 26, 2009

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO:	Fayetteville Planning Commission
FROM:	Dara Sanders, Current Planner
THRU:	Jeremy Pate, Director of Current Planning
DATE:	May 18, 2009 updated May 27, 2009

RZN 09-3280: (MATHIAS/ NW CRNR MISSION & BOX, 372): Submitted by H2 ENGINEERING, INC. for property located at THE NW CORNER OF MISSION BLVD. AND BOX AVE. The property is zoned R-O, RESIDENTIAL OFFICE and contains approximately 1.20 acres. The request is to rezone the subject property to C-1. Planner: Dara Sanders

BACKGROUND:

Property Description and History: The subject property contains approximately 1.20 acres and is located north of Highway 45 (Mission Boulevard/) and east of Highway 265 (Crossover Road) at the northwest corner of the intersection of Box Avenue and Mission Boulevard. This property is located at the entrance of the Braden Addition, a single-family subdivision that was platted in the 1960s. Currently, Box Avenue (Local Street) is not constructed to City standards. The platted cul-de-sac was not constructed, and the street ends at two residential driveways. The Planning Commission has reviewed multiple requests for the subject property and other properties in the Braden Addition dating back to 2003.

In July 2003, the previous property owner submitted a request (RZN 03-29.00) to rezone the subject property from RSF-4, Residential Single-Family, 4 units/acre to C-1, Neighborhood Commercial. Staff recommended denial of the request, finding that the request was not consistent with the Residential land use designation in the General Plan 2020, that the request was not justified due to an existing vacant property located within the immediate vicinity, and that the request would create an increase in traffic danger and congestion in the area. The applicant withdrew the request prior to the scheduled Planning Commission hearing.

In June 2005, Mathias Shopping Centers, Inc., the current owner of the subject property, submitted a new rezoning application (RZN 05-1546) to the Planning Division, requesting to rezone the subject property from RSF-4, Residential Single-family, 4 units/acre to R-O, Residential Office. Staff recommended in favor of the rezoning request, finding that the R-O zoning district was consistent with the Residential land use designation and provided a transitional zoning district from the heavier commercial uses and residential uses behind.

In 2006, the City Council adopted City Plan 2025, which changed the land use designation of the subject property from Residential to City Neighborhood Area, which encourages complete, compact

and connected neighborhoods with low-intensity nonresidential uses located at corner locations, a range of residential uses, and a high level of connectivity between neighborhoods. On September 13, 2007, the Subdivision Committee approved the applicant's Large Scale Development (LSD 07-2713) request to construct a one-story office building containing 19,209 square feet with 33 parking spaces on the subject property. Building permits were not obtained within one year of the approval date, and the project expired.

SURROUNDING LAND USE AND ZONING:

Direction from Site	Land Use	Zoning
North	Two-family residences	RSF-4
South	Retail, Restaurants, Bank	C-2, Thoroughfare Commercial
West	Gas station	C-1, Neighborhood Commercial
East	Single-family residences Elementary School	RSF-4, Residential Single-family 4 units/acre P-1, Institutional

Proposal: The applicant has submitted a new request to the Planning Division and proposes to rezone the property from R-O, Residential Office to C-1, Neighborhood Commercial, stating that the reason for the rezoning request is to propose a large scale development on the subject property to include a bakery with a drive-thru window. Currently, Use Unit 18 (Gasoline service stations & drive-in restaurants) is not a permitted or conditional use in the R-O zoning district.

Public Comment: Staff has not received public comment on this particular request.

Discussion: Staff finds that the applicant could request conditional use approval from the Planning Commission to allow for Use Unit 13 (Eating Places) to operate a bakery on the subject property. Staff does not find that the inclusion of a drive-thru window warrants approval of a rezoning request to C-1, Neighborhood Commercial, which would allow for a gasoline station, drive-thru fast food restaurant, or a strip commercial shopping center adjacent to the existing two-family dwellings to the north.

Additionally, staff finds that the C-1 zoning district is not consistent with the Future Land Use designation of City Neighborhood Area, which is intended to promote the use of low-intensity non-residential uses at corner locations. Staff finds that many of the permitted uses included in the C-1 zoning district are not low-intensity uses that will have a minimal impact on adjacent residential uses. Considering the permitted and conditional uses allowed with the underlying R-O zoning district, staff finds that the current zoning remains to be an appropriate transitional zoning district from the heavy commercial uses to the west and south to the residential and educational uses to the north and east of the subject property

RECOMMENDATION:
Staff recommends denial of RZN 09-3280 (Mathias) based on findings stated herein.

PLANNING COMMISSION ACTION:	**Required**	**YES**	
Date: May 26, 2009	○ **Tabled**	○ **Forwarded**	⊗ **Denied**
Motion: Graves	**Second:** Zant	**Vote:** 5-3-0	
CITY COUNCIL ACTION:	**Required**	**YES**	
	○ **Approved**	○ **Denied**	
Date:			

INFRASTRUCTURE:

Streets: The site has access to Box Ave. and Mission Blvd. Mission is a fully improved multi-lane state highway in this location. Box Ave. is an unimproved paved two lane city street at this property. Street improvements will be evaluated with development submittal.

Water: Public water is available to the property. There is an 8" main along Mission Blvd and a 2" main along Box Ave.

Sewer: Sanitary sewer is available to the site. There is an 8" public main along the rear of this property.

Drainage: Standard improvements and requirements for drainage will be required for the development. This property is affected by the 100-year floodplain.

Police: It is the opinion of the Fayetteville Police Department that this RZN could substantially alter the population density, and will create an appreciable or undesirable increase in the load on police services. This RZN may create an appreciable increase in traffic danger and congestion in the area.

Fire: The Fire Department anticipates 1(1 EMS – 0 Fire/Other) calls for service each year after the development is completed and maximum build-out has occurred. The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

CITY PLAN 2025 FUTURE LAND USE PLAN: *City Plan 2025 Future Land Use Plan designates this site as* ***City Neighborhood Area,*** *which encourages complete, compact and connected neighborhoods with low-intensity nonresidential uses, a range of residential uses, and a*

high level of connectivity between neighborhoods.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: **Staff finds that the C-1 zoning district is not consistent with the Future Land Use designation of City Neighborhood Area, which is predominantly residential in nature and is intended to promote the use of low-intensity non-residential uses at corner locations. Staff finds that many of the permitted uses included in the C-1 zoning district are not low-intensity uses that will have a minimal impact on adjacent residential uses. Staff finds that the request to extend the C-1 zoning district to the subject property is not consistent with land use planning objectives, which discourage permitting potentially incompatible, nonresidential land uses to encroach upon existing residential and institutional uses to the north and east of the subject property.**

Staff finds that land use planning principles and policies should not only consider the way in which the property will develop in the near future but also the way in which the property could redevelop in the long-term. Staff finds that the permitted and conditional uses included in the C-1 zoning district could potentially create an adverse impact on the adjacent nonresidential uses. Staff finds that a gasoline station, a drive-thru restaurant, or an outdoor music establishment may not be appropriate at this location.

Furthermore, staff finds that the underlying R-O zoning is consistent with land use planning objectives, principles, and policies to utilize appropriate zoning districts to serve as a buffer between varying intensities and uses. Staff finds that the R-O zoning district remains to be an appropriate transitional zoning district from the higher intensity commercial uses to the west and south to the residential and educational uses to the north and east of the subject property.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **Staff finds that a rezoning request for the subject property is not justified and needed at this time, as the subject property could be developed under the R-O zoning district as any of the nonresidential permitted and conditional uses listed in the attached zoning regulations, which would allow for businesses such as a professional office, a retail store, and a restaurant without a drive-thru. Therefore, considering the permitted and conditional uses allowed with the underlying R-O zoning district, staff finds that the current zoning does not prohibit reasonable use of the subject property and can potentially provide**

goods and services to the surrounding neighborhoods.

Additionally, staff finds that property zoned C-1, Neighborhood Commercial and C-2, Thoroughfare Commercial remains vacant in the area that could used to accommodate the proposed development under Use Unit 18 Gasoline and service stations and drive-in restaurants without a rezoning action.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **It is expected that a rezoning from R-O to C-1 will create an increase in traffic compared with that allowed under the existing zoning. Because of the size of the property and its location at the northwest corner of the intersection of Box Avenue and Mission Boulevard/Highway 45, access and vehicular traffic has been an expressed concern in the past from the Fayetteville Planning, Engineering, and Police Departments. However, should the rezoning request be approved, staff finds that the access and curb cut distance requirements outlined in the recently adopted Street Design and Access Management Standards policy in Chapter 166.08 will significantly reduce potential turning conflicts and traffic danger at this location as a result of controlled ingress and egress. Compliance with Chapter 166.08 will be reviewed at the time of large scale development request regardless of the underlying zoning district.**

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: **Increased load on public services were taken into consideration and recommendations from the Engineering, Fire, and Police Departments are included in this report.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

    a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

    b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **Staff finds that there are not extenuating circumstances that justify the rezoning and recommends denial of the request.**

161.16 District R-O, Residential Office

(A) *Purpose.* The Residential-Office District is designed primarily to provide area for offices without limitation to the nature or size of the office, together with community facilities, restaurants and compatible residential uses.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 12	Offices, studios and related services
Unit 25	Professional offices

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 11	Manufactured home park
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 24	Home occupations
Unit 26	Multi-family dwellings
Unit 36	Wireless communications facilities
Unit 42	Clean technologies

(C) *Bulk and area regulations.*
(Per dwelling unit for residential structures)

(1) *Lot width minimum.*

Manufactured home park	100 ft.
Lot within a manufactured home park	50 ft.
Single-family	60 ft.
Two-family	60 ft.
Three or more	90 ft.

(2) *Lot area minimum.*

Manufactured home park	3 acres
Lot within a manufactured home park	4,200 sq. ft.
Townhouses: Development Individual lot	 10,000 sq. ft. 2,500 sq. ft.
Single-family	6,000 sq. ft.
Two-family	6,500 sq. ft.
Three or more	8,000 sq. ft.
Fraternity or Sorority	1 acre

(3) *Land area per dwelling unit.*

Manufactured home	3,000 sq. ft.
Townhouses & apartments: No bedroom One bedroom Two or more bedrooms	 1,000 sq. ft. 1,000 sq. ft. 1,200 sq. ft.
Fraternity or Sorority	500 sq. ft. per resident

(D) *Density.*

Units per acre	24 or less

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Front, in the Hillside Overlay District	15 ft.
Side	10 ft.
Side, when contiguous to a residential district	15 ft.
Side, in the Hillside Overlay District	8 ft
Rear, without easement or alley	25 ft.
Rear, from center line of public alley	10 ft.
Rear, in the Hillside Overlay District	15 ft.

(F) *Building height regulations.*

Building Height Maximum	60 ft.

Height regulations. Any building which exceeds the height of 20 feet shall be set back from any side boundary line of an adjacent single family district an additional distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

(Code No. 1965, App. A., Art. 5(x); Ord. No. 2414, 2-7-78; Ord. No. 2603, 2-19-80; Ord. No. 2621, 4-1-80; Ord. No. 1747, 6-29-70; Code 1991, §160.041; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 4726, 7-19-05; Ord. 4943, 11-07-06; Ord. 5079, 11-20-07; Ord. 5195, 11-6-08; Ord. 5224, 3-3-09)

161.17 District C-1, Neighborhood Commercial

(Code 1965, App. A., Art. 5(V); Ord. No. 2603, 2-19-80; Ord. No. 1747, 6-29-70; Code 1991, §160.035; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 5028, 6-19-07; Ord. 5195, 11-6-08)

(A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government Facilities
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 18	Gasoline service stations and drive-in restaurants
Unit 25	Professional offices
Unit 25	Offices, studios, and related services

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback regulations.*

Front	50 ft.
Side	None
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Height regulations.* There shall be no maximum height limits in C-1 District, provided, however, that any building which exceeds the height of 10 feet shall be setback from any boundary line of any residential district a distance of one foot for each foot of height in excess of 10 feet.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

H2 ENGINEERING, INC.

April 15, 2009

City of Fayetteville
Attn: Dara Sanders
113 West Mountain St.
Fayetteville, AR 72701

RE: REZONING APPLICATION
NORTHWEST CORNER OF HWY 45 & BOX AVE

Ms. Sanders,

Please accept this letter and application as our official request for rezoning of a parcel of property owned by Mathias Shopping Centers, Inc. at the northwest corner of Arkansas State Highway 45 and Box Avenue.

The subject property is currently zoned R-O and is proposed for rezoning to C-1, Neighborhood Commercial. The reason for the rezoning is to propose a large scale development for the site which would include a bakery utilizing a drive-thru window and provide an opportunity for other low impact neighborhood services. The property to the north of our site is zoned RSF-4 (with a conditional use allowing a duplex) and the property to the east is zoned RSF-4. The property to the west is zoned C-1 with a convenience store operation. The property to the south is zoned C-2 with numerous commercial activities.

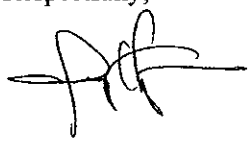
The proposed use of this property is less intense than the adjacent convenience store and contiguous commercial uses. This location is perfectly situated as a neighborhood commercial use with potential for a bakery, eating place, professional services, or professional office.

Water is available via an 8" PVC line on the south boundary, and sewer is available via an 8" line on the west boundary.

Rezoning to Neighborhood Commercial has been requested on this property in the past and denied. One of the main reasons for denial in the past was concerns about traffic on Mission Blvd. One of the main traffic concerns had to do with a desired access point onto Mission from this site and the traffic congestion that would cause on an already poor situation. With this rezoning, we intend to have the main entrance onto Box Ave. in order to avoid worsening of traffic conditions on Mission. We feel that a right-out-only exit onto Mission would be appropriate for this development and would not worsen the existing traffic conditions. The right-out-only exit will be pursued only if supported by staff.

Thank you for your consideration regarding this matter. Please feel free to call if you have any questions or comments.

Respectfully,



Jeremy Thompson, P.E.
Vice President
H2 Engineering, Inc.

RZN 09-3280: Rezoning (MATHIAS / MISSION & BOX, 372): Submitted by H2 ENGINEERING, INC. for property located at THE NW CORNER OF MISSION BLVD. AND BOX AVE. The property is zoned R-O, RESIDENTIAL OFFICE and contains approximately 1.20 acres. The request is to rezone the subject property to C-1. Planner: Dara Sanders

Public water is available to the property. There is an 8" main along Mission Blvd and a 2" main along Box Ave.

Sanitary sewer is available to the site. There is an 8" public main along the rear of this property.

The site has access to Box Ave. and Mission Blvd. Mission is a fully improved multi-lane state highway in this location. Box Ave. is an unimproved paved two lane city street at this property. Street improvements will be evaluated with development submittal.

Standard improvements and requirements for drainage will be required for any development. This property is affected by the 100-year floodplain.

Date 5/21/09

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request for comments on proposed R-PZD 09-3280 Mathias / Mission & Box, 372) Submitted by H2 Engineering Inc for property located at the NW corner of Mission Blvd and Box Avenue.

On June 17, 2005, I submitted a letter expressing traffic concerns when a bank had been proposed at this location. If the property is going to be used for the purpose which you described during our telephone, I would again have to express concern. Given its location on two main highways entering the city, its proximity to the school and other shopping centers in the area, that intersection would be very congested during the very same morning hours when a doughnut shop would be doing most of its business.

Sincerely,

Captain William Brown
Fayetteville Police Department

The City of Fayetteville Fire Department
303 W. Center St. Fayetteville, AR. 72701
Phone (479) 575-8365 Fax (479) 575-0471

To: **Dara Sanders, Andrew Garner, Jeremy Pate, and Jesse Fulcher**

From: **David Williams**

Date: **May 19, 2009**

Re: **RZN 09-3280: Rezoning (MATHIAS / MISSION & BOX, 372)**

This development will be protected by Engine 5 located at 2979 N. Crossover.
It is 1.2 miles from the station with an anticipated response time of 2 minutes to the beginning of the development.
The Fire Department anticipates 1(1 EMS – 0 Fire/Other) calls for service each year after the development is completed and maximum build-out has occurred. The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

If you have any questions please feel free to contact me.

Fire Marshal
Fayetteville Fire Department

CITY COUNCIL MINUTES

RSF-4 to R-O

RZN 05-1546 (Mathias): An ordinance rezoning that property described in Rezoning Petition RZN 05-1546 for approximately 1.20 acres located at the northwest corner of Highway 45 and Box Avenue from RSF-4, Residential Single Family, 4 Units Per Acre to R-O, Residential Office.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the project. Staff is recommending approval and the Planning Commission voted 9-0 in favor of this rezoning.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Marr was absent.

City Attorney Kit Williams read the ordinance.

Alderman Cook: My concern is the intersection there. It is really getting congested.

Jeremy Pate: There are definitely some concerns especially to the west of this property. Staff will evaluate what is proposed as part of the overall large scale development. There are ways to restrict access onto Mission.

Alderman Cook: My concern is arterials where we have created a nightmare of access on the roads and it creates serious situations. This piece of property is located right next to an existing street so there is an opportunity to use that. It does back up there, that is certainly a concern of mine.

Alderman Thiel: This owner has 1.83 acres. He is just requesting the front 1.20 acres to be rezoned. Is there some reason why he is not requesting the rest of it to be rezoned?

Jeremy Pate: It is likely that part of it is not going to be utilized for the development.

Kipp Hearne, H2 Engineering: The back part is being contemplated for some kind of residential development.

This ordinance was left on the second reading.

RZN 05-1564 (Mountain Ranch): An ordinance rezoning that property described in Rezoning Petition RZN 05-1564 (Mountain Ranch D,E,H,I,J) for approximately 193.66 acres located south of Persimmon Street and west of Shiloh Drive from R-A, Residential Agricultural to RSF-2, Residential Single Family, 2 Units Per Acre.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of this Mountain Ranch rezoning and the following Mountain Ranch projects. Staff is recommending approval and the Planning Commission voted 9-0 in favor of this rezoning.

is quite a change from the standard RSF-4, but it is accomplishing the same thing. I think it will be a good subdivision.

A Citizen (No name was given): I was very excited to learn about this particular project. I think if you want to find the future you need to look to the past. This is kind of where this goes. This has a lot of really unique features. It de-emphasis cars, there is affordable housing in it, it is walkable, it is very ascetically pleasing and I think it is the wave of the future. I strongly encourage you to do everything you can to approve this and approve other housing developments like this. It truly does help us from an economic development point of view to have this kind of development and to have these kinds of developers here that are really looking into the future and planning really quality type developments. I particularly like the mixed income type things and I think it is important to you to have some more affordable housing.

Tom Fetner, Bridgeport Resident: I don't think that any of the residents disagree with what has been said so far. We do still have a few issues we would like to discuss. Alderman Jordan has set a Ward meeting for us for Friday night. If we can get together Friday night, I think we can work out the few issues that we have left and we will feel more comfortable with it at that point in time.

This ordinance was left on the second reading.

The following item was moved from New Business.

R-PZD 05-1555 (Oakbrooke Subdivision): An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1555, Oakbrooke Phase II, located west of Rupple Road and east of Bridgeport Phase II, containing approximately 11.5 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

This ordinance was left on the second reading.

RZN 05-1546 (Mathias): An ordinance rezoning that property described in Rezoning Petition RZN 05-1546 for approximately 1.20 acres located at the northwest corner of Highway 45 and Box Avenue from RSF-4, Residential Single Family, 4 Units Per Acre to R-O, Residential Office. ***This item was Left on the Second Reading at the July 19, 2005 City Council meeting.***

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Tom Hennelly, H2 Engineering: This was initially tabled due to a traffic issues that were related. We have addressed those issues with staff and resolved them in the large scale that is to follow and come through the Planning Commission. We have addressed those items.

Jeremy Pate: The primary issue with this particular request is the access onto Highway 45 in this location because of sight distance issues. The Engineering staff will be looking at that very carefully to determine if an access is needed what the best way would be to access onto Highway 45 from this location. We have not actually seen development plans; the large scale development would follow this rezoning request.

Terry Box, a Resident: My father and the family trust own the property directly north of the Mathias property. This does not border the Box property, but the rest of the property that they own does. We want to voice our support of the R-O zoning for this property. We do have some reservations based on some discussions that we have heard in the past, on what they might do with the remaining part that they are not asking to be rezoned right now. There are some that have said they may want to do a higher density residential area there. We would be opposed to that. We think the best use long term is R-O for all the property on Box Avenue.

Alderman Ferrell: There is C-1 and R-O west of you, right?

Terry Box: The east side is Box Avenue, the south side is bounded by the Mathias property, the north side is R-O, half of the west side of the property is C-1, the other half is already R-O. In our opinion the best use in the future would be R-O.

Alderman Reynolds: I talked to Mr. Mathias and he said he was going to leave that R-O.

Alderman Cook: One of my problems was the traffic on Mission and Highway 45. As that cul-de-sac develops over time it is going to create more traffic through there. If they could design a way to connect that cul-de-sac to Vandergriff Drive and create a connection then I would not be concerned about the zoning as far as density.

Terry Box: We discussed that with the Planning Commission in the past. My father would give road right-of-way if a road could be built. The problem would be the engineering, but we are willing to work out something on that.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4734 as Recorded in the Office of the City Clerk.

RZN 05-1564 (Mountain Ranch): An ordinance rezoning that property described in Rezoning Petition RZN 05-1564 (Mountain Ranch D,F,H,I,J) for approximately 193.66 acres located south of Persimmon Street and west of Shiloh Drive from R-A, Residential Agricultural to RSF-2,

MINUTES OF A MEETING OF THE PLANNING COMMISSION

A regular meeting of the Fayetteville Planning Commission was held on May 26, 2009 at 5:30 p.m. in Room 219, City Administration Building in Fayetteville, Arkansas.

ITEMS DISCUSSED	ACTION TAKEN
MINUTES: May 11, 2009 Page 3	Approved
ADM 09-3298: (GARDENS ON PERSIMMON EXTENSION, 477/478) Page 3	Approved
VAC 09-3282: (UA / 2OTH STREET, 601) Page 4	Approved
VAC 09-3269: (SCHMITT / 2614 TIMBERGLEN, 298) Page 5	Approved
CUP 09-3283: (WRIGHT/ 3075 E. MISSION, 372) Page 6	Approved
CUP 09-3284: (SMITH 2-WAY/ 106 MASONIC DRIVE, 213) Page 7	Approved
CUP 09-3299: (FAYETTEVILLE PUBLIC LIBRARY/ 401 WEST MOUNTAIN, 523) Page 8	Approved
RZN 09-3280: (MATHIAS/ NW CRNR MISSION & BOX, 372) Page 9	Denied
RZN 09-3271: (SALE BARN / CAMPUS CREST LLC, 562) Page 10	Denied

DRAFT

RZN 09-3280: (MATHIAS/ NW CRNR MISSION & BOX, 372): Submitted by H2 ENGINEERING, INC. for property located at THE NW CORNER OF MISSION BLVD. AND BOX AVE. The property is zoned R-O, RESIDENTIAL OFFICE and contains approximately 1.20 acres. The request is to rezone the subject property to C-1.

Dara Sanders, Current Planner, gave the staff report, describing the history of requests back to 2003, two of which were rezoning requests. In 2003 a request to rezone from RSF-4 to C-1 was denied by staff, finding it was not consistent with the Future Land Use designation and that it could potentially increase traffic danger in the area. In 2005 the current property owner requested to rezone from RSF-4 to R-O, staff was in favor of that request. In 2006 City Plan 2025 changed the Land Use Designation from residential to city neighborhood, which does encourage low-intensity non-residential uses at corner locations. The applicant is now requesting a rezone from R-O to C-1, stating that the reason is for the potential construction of a bakery with a drive-thru window, which is classified as Use Unit 18, which is neither a permitted nor a conditional use in the R-O zoning district. Staff finds that under the R-O zoning district, the applicant could request Conditional Use Permit approval to operate a bakery on the subject property as Use Unit 13, however staff does not find that the inclusion of a drive-thru window warrants approval of a rezoning request to C-1, which would allow for a gasoline station or shopping center. Staff findings that the C-1 zoning district is not consistent with the Future Land Use Plan designation of City Neighborhood Area. Staff findings that many uses in the C-1 zoning district are not low-intensity uses. Considering the permitted and conditional uses allowed with the underlying R-O zoning district, staff finds that the current zoning district remains to be an appropriate transitional zoning district and recommends denial of the request.

Kipp Hearne, H2 Engineering, stated he would like to encourage discussion on two issues: zoning and traffic. I certainly think that with this particular location, we can have a healthy debate over the C-1 Neighborhood Commercial vs. this future City Neighborhood area that's been designated within the City Plan 2025. I think part of the problem here is that we've got this well thought-out plan, but we don't have all the tools for Planning staff to utilize those – we don't have any more distinct zoning districts or use units identified that can be a little more creative in situations like this. That being said, we're going to have to be a little more creative when we come across situations such as this, in that we've got some fairly specific Use Units that we want to apply to this, but understand the concerns of staff that they don't want to introduce other Use Units that would not have the compatibility with the surrounding area. When we started this process – and I think it's a little ironic that the reason we're here today is that we're trying to accommodate a bakery, that was our initial thought, and that would be a part of a larger facility. With a bakery, just the business model of a bakery, it mandates a drive-thru. But we didn't have any way as a Conditional Use to accommodate that drive-thru with R-O zoning. So, we approached staff with this dilemma and if we went to C-1, that offers Use Unit 18 which accommodates us, but also allows us to put a gas station there. Of course, we agreed that's not the appropriate place for a gas station, it's too intense. So, the other option is to simply to do a PZD. That was discussed a little bit, but as much as I like the PZD ordinance, we don't think that this would call for the effort and cost to get a PZD just for a drive-thru for a restaurant or a bakery. That's the real key. Whether a bakery goes there or not, if there's another restaurant that goes in that space, we'd like the ability to offer a restaurant to those folks as well. That being

said, this property is located 150 ft. from the intersection of Hwy 265 & Hwy 45, a well-traveled area. Directly to our south is C-2. Directly to our west we have C-1 zoning with the gas station. To our north is a multi-family use, to the east is single-family, and beyond that is the school. So in my mind, I don't think I could point you to a more appropriate place in town for C-1 Neighborhood Commercial. It's a great transitional zoning. I have no doubt that in the future, Planning staff will have at their disposal additional zoning criteria available to them that will be more applicable. But at least for right now, I think what we would like to offer is the negotiation with you tonight, a Bill of Assurance that would limit the permitted uses in C-1 that you would find incompatible with this particular location but still allow us the ability to go forward with the uses that we anticipate. The other issue is traffic. We understand that Police is the other variable here that have offered some comments in the past. This is a very congested area. You have two well-traveled highways here which in my mind reinforces the fact that it is more of a commercial area than a residential area. One major improvement to this traffic problem, and I have just to let traffic dictate the zoning we're looking at here tonight. Yeah, what we're talking about is a little more intense than R-O, it's going to provide a little more traffic, but when you compare that incremental traffic volume to what's there now, I think you'll find that it's very insignificant. The other thing about traffic is, it's gonna kinda take care of itself. There are some turning movements out there right now that are very difficult, and the thing about traffic is, they're not going to do it. We don't go places that are hard to get to. So, it will be easy to get back onto Hwy 45 from this project, we've got Box Ave. available to us which we can access, and we would be in compliance with the Access Management codes out there. The big point that Police have not considered in this is at Starr Road and Hwy 45, a traffic signal is being installed there. Engineering anticipates that it will be installed within a month. So that will be a very positive action that will benefit this entire area. Again, I recognize and appreciate Planning's concerns about transition and traffic, but I don't think they have enough tools to be creative enough to accommodate us. I feel like with R-O, you're really limiting the potential of this property that is perfectly situated for more commercial uses than what R-O can allow. Thank you.

Mena Dotty, neighbor, stated she has managed and owned Daylight Donuts at 1968 Crossover Rd. for seven years. Our lease ran out, it was not renewed, and this is where we'd like to move. The Mathiases are building and we can open as soon as they can get it built. We'd sure appreciate it. A lot of our customers have certainly approved us moving to that area. We were hoping to be in the first of August, of course we won't be able to do that as it stands right now. But we're waiting on confirmation of the rezoning first.

Audrea Pointer, former employee at Daylight Donuts, stated that there was an enormous amount of patronage at the old store. There were daily regulars, and we have received a lot of expressed interest. We've exhausted lots of possibilities, we've looked elsewhere and haven't been able to find it. As for the traffic, people are going to take care of their traffic. If it's too hard to turn left, they're going to go right. I live in that area, so I understand the traffic. Please consider approving this zoning.

No further public comment was received.

Commissioner Kennedy asked what uses would be removed from the Bill of Assurance

proposed, and asked that the City Attorney discuss the Bill of Assurance process so we all know what it means and how it's enforceable.

Kit Williams, City Attorney, stated that the Planning department has a form Bill of Assurance that needs to be filled out and signed by the applicant and presented to the Planning Commission or City Council. The applicant will note on the form which Use Units they wish to exclude voluntarily from the rezoning that they're seeking in order to try and make the rezoning something that the Planning Commission and City Council could approve. Bills of Assurance can't be orally done, they have to be in writing. I have not seen that yet, I don't know if anything has been presented at this point.

Hearne stated that was thought of this afternoon during discussion with staff. I was not aware I had to submit an official form at Planning Commission this evening. I was hoping to make it a matter of record and we could produce that tomorrow and submit it to staff.

Williams stated that you could certainly do that. In my opinion, it would not be effective until it was presented at the City Council level in writing, properly signed and notarized, etc. It must be something offered by the applicants, it cannot be something the Planning Commission can negotiate for. So, you have to listen to comments that the Planning Commission might have and what your thoughts might be in relation to what the City Council would like to see there and would not like to see there and then make your proposal to the City Council about which Use Units you would like to retain in Neighborhood Commercial, and which you feel would be inappropriate and therefore likely to cause your rezoning to be rejected.

Hearne stated that in order to help facilitate the discussion, on behalf of the client he would like to modify Use Unit 18 as a permitted use to remove gasoline service stations and include only drive-in restaurants. I don't know that there's really any need to go any further than that. As far as Conditional uses, there's liquor stores. We could remove that now – it is a conditional use that if I presented it to you you would decline. So, I'll go ahead and propose to remove liquor stores, Use Unit 24, from the conditional uses.

Commissioner Kennedy stated that clears up his question. We will need to discuss how this changes our opinion.

Williams stated you could certainly assume that the Bill of Assurance will be submitted as discussed tonight if you want to. You are making a recommendation to the City Council, so you can base that recommendation on what was presented by the applicant here.

Commissioner Zant stated that his question was forming around the potential Conditional Use requirements. You've taken liquor store out, I don't know that you'd have problems with outdoor music establishments or sidewalk cafes. Our applicant does appeal that eating places or neighborhood shopping or drive-in restaurants would negatively impact the single-family housing to the east or any adverse impact on the schools to the east. Maybe you'd like to comment on that?

DRAFT

Hearne asked if he is being asked for his perspective on the impact of these proposed units of this project on the single-family to the east?

Commissioner Zant stated that was correct.

Hearne stated that taking this project and looking at the entire area out there, if you look within a quarter mile radius of this area, it's a commercial hub. It's a location where two state highways come together, and that inherently is a very intense area. That's why the commercial we're proposing is not going to draw more people in there, it's just taking advantage of the traffic that's already there. In that sense, it's more appropriate for that to be more of a commercial property.

Commissioner Zant stated that we sensed that it is to some degree a commercial property, but I think the difficulty lies on whether or not it is too intense for the property being proposed here. Staff is quite concerned over the drive-in restaurant impact and the impact of what would have been the full array of uses here, with schools to the east here.

Hearne stated that with the Planners, it's tough trying to predict and dictate – this is going to be an eating establishment but it will be walk-in customers here, that kind of thing – one of the things we've seen in the development community and particularly with trying to lease property is that the business model for eating places, it's part of our culture now to want to go through a drive-thru. More and more business models are being driven toward that. We're just trying to build a facility here to accommodate what the true needs are in the community and in these businesses.

Commissioner Honchell stated that the way this was presented to us in our agenda meeting was that it was going to be a bakery. In my mind, it's pretty logical to assume that the housing coming from Starr from the east and anything flowing to the bakery – there's no reason for traffic to be pulled out east other than the school. I think the logical approach would be, take the kids to school, do the turnaround, head back to work which would be due west, loop through the bakery if that's where you want to go, and that would generally take the traffic in a constant roundabout. Unless the applicant would object to having some kind of signage coming over the hill to warn everybody that there is going to be cross-turning traffic. One thing I did not pay particular attention to was the turning lane. Does the turning lane going up the hill start as the hill progresses east up the hill, or does it cross in front of Box Street? Because if they could extend the turning lane down to encompass Box, or widen an easement to accommodate it, I don't see why there would be any traffic problem. The bakery will open early in the morning, and I think the people who will be drawn there early will be there, and the flow-through traffic will be from the school and residential going east to west, in my mind.

Hearne stated that's exactly what we contemplated there.

Commissioner Honchell stated that with the addition of the light at Starr, I think that would accommodate an interruption in traffic enough to accommodate it.

Hearne stated that we have drawn on some of our conceptual large-scale plans, to help

encourage that westerly traffic out of the place, we'd like to explore the opportunity to have a right-out only.

Commissioner Lack stated that we should keep in mind that development issues cannot considered for approval or denial of a rezoning application.

Commissioner Winston asked if there is a distinction between restaurants with a drive-thru and drive-in restaurants. For instance, Sonic is a drive-in restaurant, and this is an eating place with a drive-thru. Is it possible that Use Unit 18 could read, "restaurant with a drive-thru" rather than drive-in restaurants?

Jeremy Pate, Development Services Director, stated that Use Unit 18 encompasses any drive-thru or drive-in capacity, in terms of that use. Use Unit 13, which is eating establishments, is a sit-down restaurant type use. So the distinction is made because there's a much higher traffic generation with a drive-in or drive-thru restaurant than a sit-down eating establishment. That's why it's lumped together with gasoline service stations, when you run those traffic models it has a much higher turnover. It's usually a higher peak hour because it's usually a coffee shop or bakery that has a much higher peak hour time. A sit-down restaurant will also have a peak hour time typically at noon or dinner time, so the peak hours can vary related to that. So that's one reason why we make the distinction. So, in many ways it's about traffic, it also refers to simple land-use patterns. I don't think the Bill of Assurance offered here would change our recommendation. We feel that R-O is the actual transition between a residential neighborhood and commercial. There's a very distinct boundary, drainage area between commercial along Crossover Rd. and residential on School, which are much quieter and low-intensity in nature and we feel the R-O establishment is that primary use. There is C-2 across the street from this; I don't think staff would ever recommend C-2 in those locations at this point in time. The actual land use is Bank of Fayetteville directly across the road, so that's more of an R-O office type establishment as well.

Commissioner Winston asked what is the lowest-intensity zoning that we have right now that would allow a drive-thru restaurant as a conditional use.

Pate stated that there is no other zoning district other than C-1 that allows drive-in restaurants as a Conditional Use.

Commissioner Lack asked for clarification that staff's recommendation, even with a Bill of Assurance, would be what?

Pate stated that it would be for denial of this application. In 2005 or 2006, when this property was rezoned, it came forward as a C-1, and the compromise then was R-O, because everyone felt that was an appropriate transition and we still feel that is the appropriate transition today. Although I think circulation patterns could possibly be worked out within the development proposal, that's not what we're considering at this point in time. I think if we go that far, another connection to Box Avenue to allow ingress and egress back to Crossover – there are many other options we've discussed with Mr. Box, who has looked at developing this property in the past.

There are inherent concerns we have with continuing a commercial zoning along Mission Ave. in this location.

Hearne stated that in the past, staff's concern stemmed from the opposition that the Police Dept. had voiced with respect to the congestion out there, and this being one of their highest areas of concern. Now, with the introduction of this traffic light at Hwy 45 & Starr Rd., I believe it's going to become a much safer situation, though we don't have any real data to prove that. Prior to passing the City Plan 2025, was there really a thorough debate over the zoning and transition, or was it primarily from the traffic concerns introduced by Police?

Pate stated that from our perspective, that was one component, but if you look at staff reports from back in 2003 and 2004, Future Land Use Plan and land use at this property were always part of this discussion. The fact that the Police Dept. has actually commented on this site, which they rarely do, is something that we certainly take into consideration very carefully because it's something that's unique. Most of the reports that you find from our Police Dept. don't have an issue with the zoning, but this one in particular, they have comments related to traffic safety and I'm assuming it's because of the number of traffic accidents or calls they get at this stretch of intersection. But that's simply one of the comments, not the complete basis of our recommendation in the past.

Commissioner Graves made a motion to deny the request. Commissioner Zant seconded the motion.

Commissioner Kennedy stated that he believes we're in a situation where you've got a drive-in bakery that doesn't necessarily coincide with what the traffic of a Sonic or something that would be open 24 hours or early in the morning and late at night, so I feel like we've been put in a situation here where the use they're proposing probably would work fine and there may be things that would be allowed in R-O that would produce a situation that would be far more dangerous than a shopping center with a donut shop on the endcap. That said, once you rezone something, they could come back and say well the donut shop has found a new place, and now it's going to be a sandwich shop that will be open early in the morning and late at night. So, I don't like the fact that I have to deny this, but I don't see another option other than a PZD that would specifically spell out that this could only be used for an establishment that would only be open from 5-11 AM or something like that. So, I don't like that this has to be denied, but I don't see another option right now.

Commissioner Zant stated he concurs with Commissioner Kennedy's analysis. We're voting classifications and nothing is cast in stone. What one use in a classification is might be offensive and another would be acceptable. I have to agree with staff's recommendation here, I feel that going to C-1 at this location is too intense, and there's single-family housing close by, and the multi-family just to the north, and I don't think it's appropriate to intensify it.

Commissioner Myres stated she feels compelled to go against staff's recommendation in this instance. I think a Bill of Assurance goes a long way in giving some assurance that the uses that the property would be put to would be acceptable in this particular location. There's also a great

deal of heavy commercial development right across the street which goes some way up the hill before it becomes residential. In some ways this feels like an arbitrary cutoff point, because we've got Walgreens, two grocery stores, all kinds of heavy duty stuff in a radius around this intersection much greater than where this property lies. So, I'm going to vote against the motion as stated, because I think I would be happy to see this go through.

Commissioner Winston asked if this piece of property was owned by the Boxes before hand, and if the residents next to it are also owned by the Boxes?

Pate stated that the original subdivision was developed by the Boxes, ownership is not entirely by them now, though. Mr. Box and some of the Box family live at the very north end of this property, but there are some other property owners along the street.

Commissioner Winston stated that the neighbors who will be most affected by this change are either not here or probably are behind it. So, that does affect my vote in some way and I'm really not decided yet. But the issue with the traffic from the Police Dept. also carries a lot of weight. I really appreciate the Bill of Assurance and I'd like to see that use there, I think it would work well and I think that Commissioner Kennedy had a good point that this is a restaurant only open in the morning times, that's when things are busiest, but there's no guarantee that this won't be turned into a Sonic or something that would have a much higher level of traffic.

Upon roll call the motion passed with a vote of 5-3-0, with Commissioners Honchell, Myres, and Kennedy voting no.

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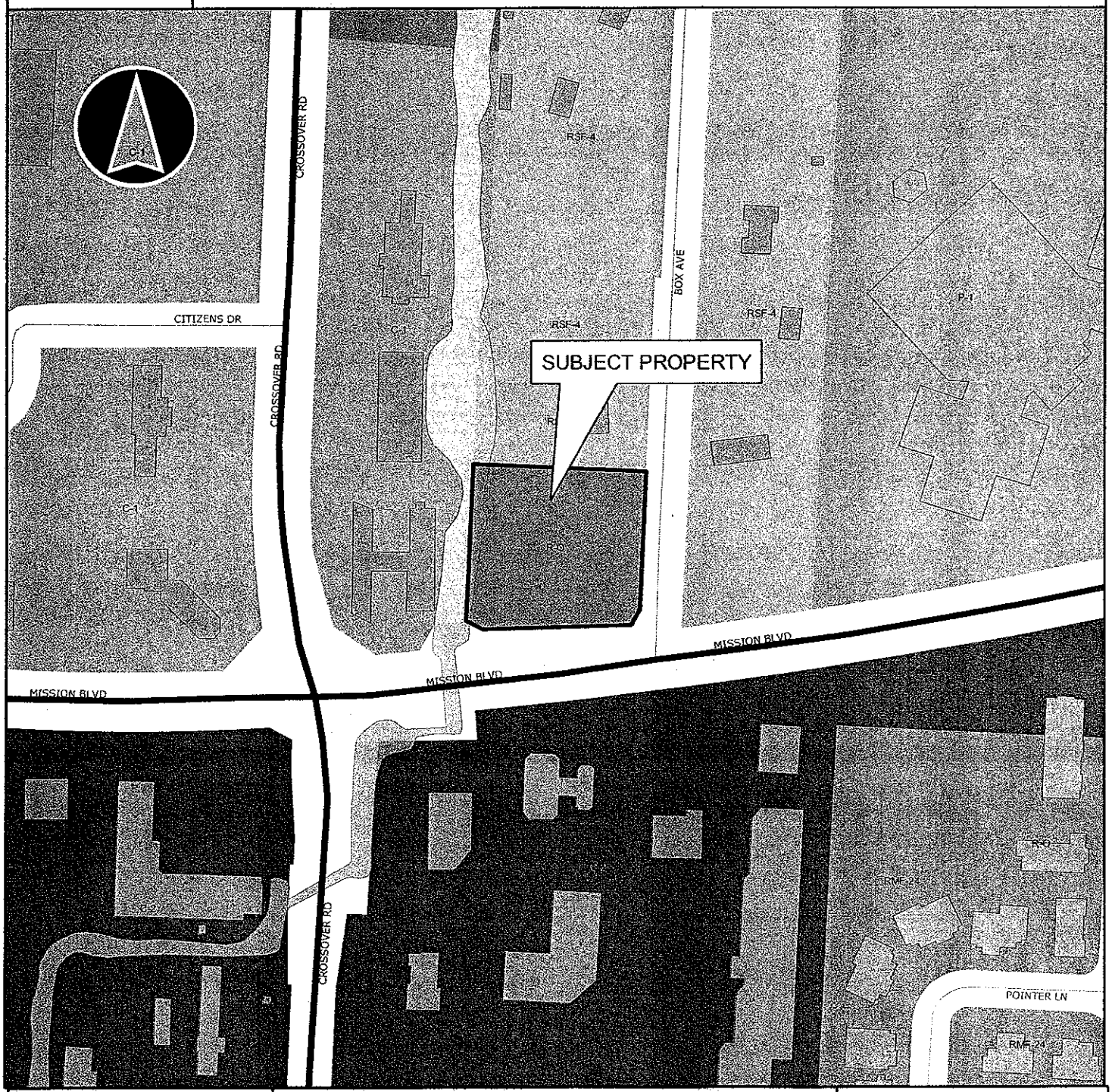
RZN09-3280

Close Up View

MATHIAS/ NW CRNR MISSION & BOX



Overview

0 75 150 300 450 600 Feet

Legend

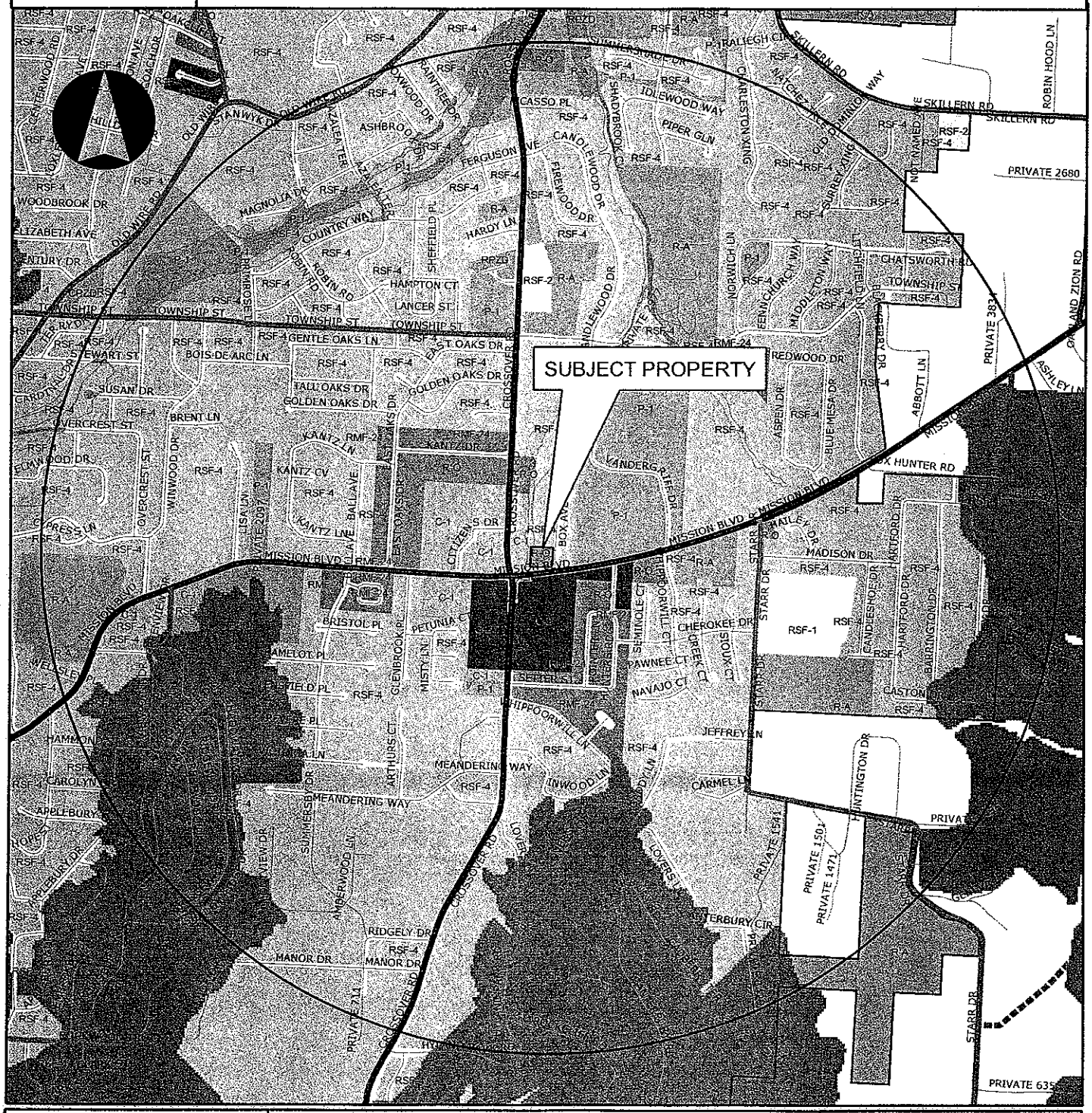
- RZN09-3280
- 0.2% Chance Floodplain (500 - yr Floodplain)
- Zone A, 1% Chance Floodplain (100 - yr Floodplain)
- Zone AE, 1% Chance Floodplain (100 - yr Floodplain)
- 2007 Footprints
- Design Overlay District
- Fayetteville
- Planning Area

Fayetteville

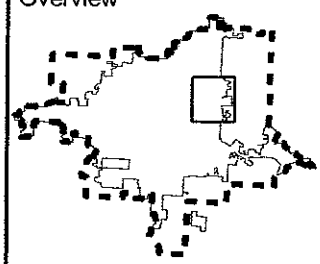
RZN09-3280

One Mile View

MATHIAS/ NW CRNR MISSION & BOX



Overview



Legend

Subject Property

RZN09-3280

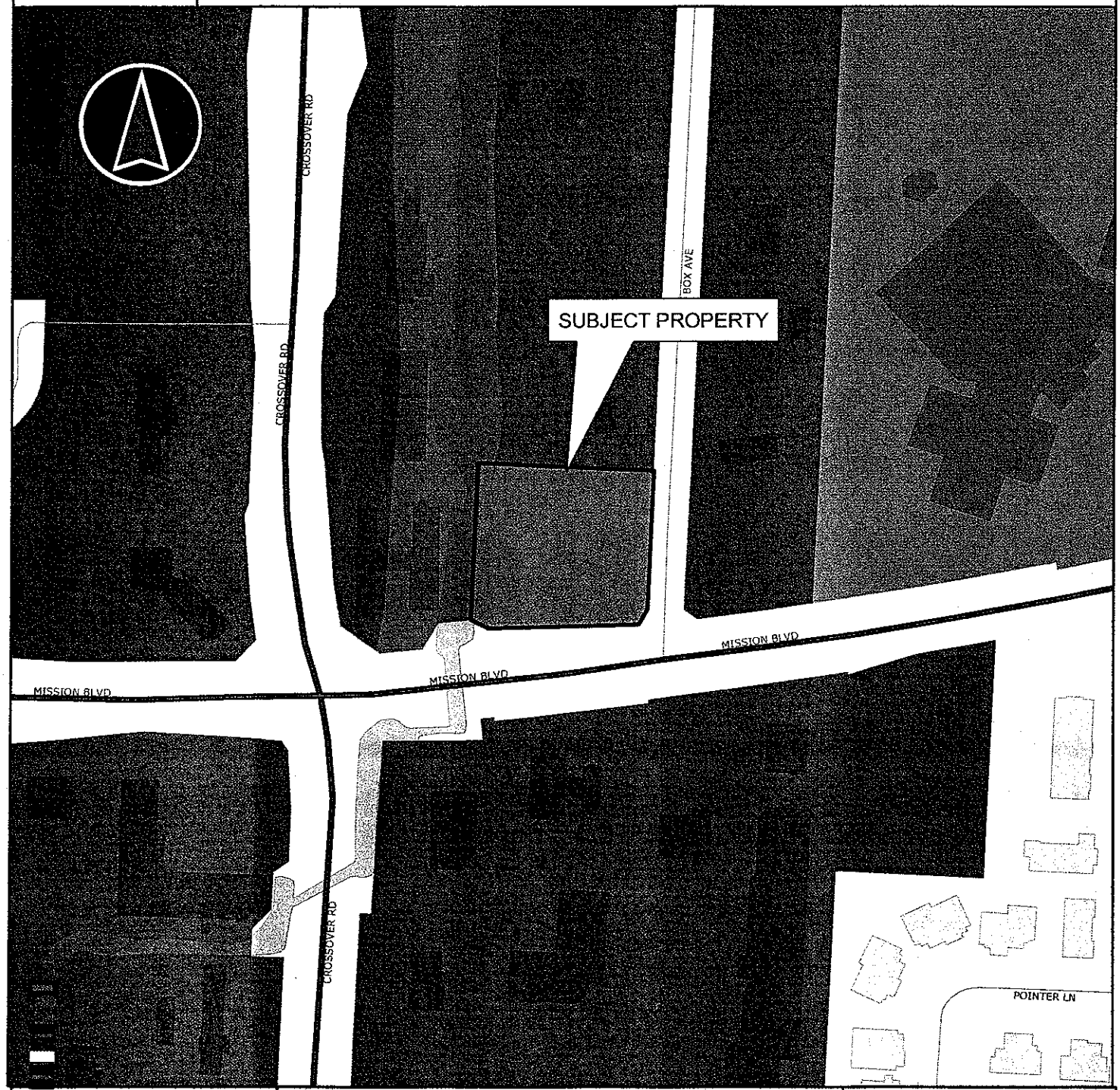
Boundary

0 0.25 0.5 1 Miles

RZN09-3280

Future Land Use

MATHIAS/ NW CRNR MISSION & BOX



Overview

- Industrial
- Civic and Private Open Space/Parks
- Civic Institutional
- Non-Municipal Government
- ROW
- 0.2% Chance Floodplain (500 - yr Floodplain)
- Zone A, 1% Chance Floodplain (100 - yr Floodplain)
- Zone AE, 1% Chance Floodplain (100 - yr Floodplain)
- 2007 Footprints
- Design Overlay District
- Planning Area

Fayetteville

0 75 150 300 450 600 Feet

City of Fayetteville Staff Review Form

City Council Agenda Items and Contracts, Leases or Agreements

7/7/2009
City Council Meeting Date
Agenda Items Only

Karen Minkel		Strategic Planning/Internal Consult.
Submitted By	**Division**	**Department**

Action Required:

ADM 09-3307: (Sustainable Yards): The request is for approval of an ordinance amending §95.01 Unsightly or Unsanitary Conditions On Real Property; Order and Notice To Correct of the Fayetteville Code to encourage properly maintained and managed naturalistic landscapes.

N/A	$ -	
Cost of this request	Category / Project Budget	Program Category / Project Name
	$ -	
Account Number	Funds Used to Date	Program / Project Category Name
	$ -	
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐ **Budget Adjustment Attached** ☐

Karen Minkel — Department Director — 6/15/09 Date

J. C. Williams — City Attorney — 6-17-09 Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Paul A. Becker — Finance and Internal Services Director — 6-18-2009 Date

Received in City Clerk's Office — ENTERED 6/17/09

Don Marr — Chief of Staff — 6/18/09 Date

Received in Mayor's Office — ENTERED 6/17/09

Lioneld Jordan — Mayor — 6/19/09 Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Karen Minkel, Strategic Planning and Internal Consulting Director KM

Date: June 11, 2009

Subject: Sustainable Yards (ADM 09-3307)

RECOMMENDATION

Strategic Planning Staff recommends approval of an ordinance amending §95.01 Unsightly or Unsanitary Conditions On Real Property; Order and Notice To Correct of the Fayetteville Code to encourage properly maintained and managed naturalistic landscapes.

BACKGROUND

Multiple articles related to sustainable yards and gardening have appeared in national magazines over the past several years citing the benefits of landscapes that require less water and chemicals than conventional yards. These articles indicate the growing public interest in experimenting with these types of yards, which is reflected in the handful of complaints the Code Compliance Division receives each year where the property owner claims that s/he is cultivating a naturalistic landscape or sustainable yard and wants to be an exception to the City's mowing and weed treatment requirements. These naturalistic landscapes are desirable because they reduce maintenance, conserve water, soil and other elements of the natural ecosystem and often eliminate the need for pesticides, fertilizers and other pollutants, promoting the City's overall goal of becoming increasingly sustainable.

Strategic Planning staff has worked with the Development Services, Sustainability, and Parks, Recreation and Community Spaces Departments to craft a protocol to identify and exempt these types of yards, enabling property owners and the community overall to benefit from these landscapes. The draft protocol requires property owners of sustainable yards to complete a packet that identifies the vegetation in their yard and submit the packet to the Code Compliance Division. Staff will then compare the submitted packet to a list of over 200 plant species compiled from three sources that address native plant species in Northwest Arkansas. Invasive species, even if native, and turf grass will not be considered sustainable for the purposes of this policy. If there is a discrepancy between the two lists, Code Compliance staff will consult with the appropriate Parks, Recreation and Community Spaces staff in order to make a final determination.

Currently, Code Compliance staff does not have authority to allow an exception for naturalistic landscapes or sustainable yards. The proposed ordinance amendment will enable the Mayor to authorize staff to implement a protocol for addressing these properties.

DISCUSSION

The ordinance was discussed by the Ordinance Review Committee on June 10, 2009. City Council member Lewis requested that the word "manage" be added to Section C so that the ordinance reads as, "...whether the owner desires to maintain and *manage* a naturalistic and sustainable landscape..." City Attorney Kit Williams also advised that Section A be changed to read as, "...the mayor, or his duly authorized representative, *may* give the owner of the property written notice..." rather than "*shall* give the owner..." so that the Mayor is not required to give written notice of the violation by City Council. The Ordinance Review Committee voted to forward the ordinance with these changes by a vote of 3-0-0.

BUDGET IMPACT

None.

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council

CC: **Karen Minkel**, Strategic Planning
Yolanda Fields, Community Services

FROM: **Kit Williams**, City Attorney

DATE: **June 12, 2009**

RE: **§95 .01 Unsightly or Unsanitary Conditions on Real Property**

The Ordinance Review Committee met with city staff on June 10, 2009, to discuss the merits and advisability of amendments to §95.01 **Unsightly or Unsanitary Conditions on Real Property**. Earlier the Environmental Concerns Committee had also discussed the need for additional clarity in the code section and administration procedures for properly addressing naturalistic landscaping. After full discussion and careful consideration, the Ordinance Review Committee modified the staff proposal and then unanimously recommended passage of the proposed amendment to the City Council.

I have attached the current §95.01 (showing where the current "shall" is proposed to be amended to "may") as well as the state statute that authorizes our ordinance. I believe the affected City Staff unanimously joins the Ordinance Review Committee in recommending approval of the amendments.

ORDINANCE NO.

AN ORDINANCE TO AMEND §95.01 **UNSIGHTLY OR UNSANITARY CONDITIONS ON REAL PROPERTY; ORDER AND NOTICE TO CORRECT** OF THE FAYETTEVILLE CODE TO ENCOURAGE PROPERLY MAINTAINED AND MANAGED NATURALISTIC LANDSCAPES

WHEREAS, the Aldermen Ordinance Review Committee has unanimously recommended approval of this amendment of §95.01 based upon staff suggestions; and

WHEREAS, the City Council desires to allow its citizens to create properly maintained and managed naturalistic landscapes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas, hereby amends **§95.01 Unsightly or Unsanitary Conditions On Real Property; Order and Notice To Correct** by replacing the word "shall" with the word "may" in the second sentence of subsection (A).

Section 2: That the City Council of the City of Fayetteville, Arkansas, hereby amends **§95.01 Unsightly or Unsanitary Conditions On Real Property; Order and Notice To Correct**, by enacting a new subsection (C), as follows:

> "(C) The mayor is authorized to establish comprehensive procedures to administer this section and to determine when corrective actions by a landowner are necessary. The mayor may consider how the land is being used: agricultural, parkland, woodlands, residential, commercial, institutional, or industrial; and whether the owner desires to maintain and manage a naturalistic and sustainable landscape when determining whether a landowner must take corrective action."

PASSED and **APPROVED** this 7th day of July, 2009.

APPROVED:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

CHAPTER 95: HEALTH AND SANITATION

ARTICLE I
GENERAL PROVISIONS

95.01 Unsightly Or Unsanitary Conditions On Real Property; Order And Notice To Correct

(A) The mayor, or his duly authorized representative, is hereby authorized to order the owner of any real property within the city to cut weeds and grass growing thereon, remove garbage, rubbish and other unsanitary and unsightly articles and things therefrom and eliminate, fill up or remove any stagnant pool of water or any other unsanitary thing, place or condition on such property which might become a breeding place for mosquitoes, flies and germs harmful to the health of the community. Whenever any such condition is found to exist, the mayor, or his duly authorized representative, shall give the owner of the property written notice to perform such acts within 10 days. In case the owner of the property is unknown or his whereabouts is not known or he is a nonresident of this state, a copy of the written notice shall be posted upon the premises.

MAY

(B) It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.

(Code 1965, §11-1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Code 1991, §95.01; Ord. 4510, 08-19-03)

Cross reference(s)--Penalty, §95.99.

State law reference(s)--Municipal authority, A.C.A. §14-54-901.

95.02 Abatement By City; Costs Responsibility Of Owner

If the conditions described in a notice given pursuant to §95.01 are not removed or corrected within 10 days after such notice is given, the mayor, or his duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described, in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property and the city shall have a lien against such property for such costs.

(Code 1965, 11-2; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Ord. No. 2557, 9-4-79; Code 1991, §95.02; Ord. 4510, 08-19-03)

Cross reference(s)--Penalty, §95.99.

State law reference(s)--Refusal of owner to comply, A.C.A. §14-54-903.

95.03 Enforcement Of Lien; Notice

(A) The lien herein provided for may be enforced and collected in either one of the following manners:

(1) The lien may be enforced at any time within 18 months after work has been done, by an action in circuit court; or

(2) The amount of the lien herein provided may be determined at a hearing before the City Council held after 30 days' written notice by certified mail to the owner or owners of the property, if the name and whereabouts of the owner or owners be known, and if the name of the owner or owners cannot be determined, then only after publication of notice of such hearing in a newspaper having a bona fide circulation in Washington County for one insertion per week for four consecutive weeks; the determination of the City Council shall be subject to appeal by the property owner in circuit court; and the amount so determined at said hearing, plus ten percent penalty for collection, shall be by the City Council certified to the tax collector of the county, and by him placed on the tax books as delinquent taxes, and collected accordingly, and the amount, less three percent thereof, when so collected shall be paid to the city by the county tax collector.

(B) In case the owner of any lot or other real property is unknown or his whereabouts is not known or he is a nonresident of this state, then a copy of the written notice hereinabove referred to shall be posted upon the premises and before any action to enforce such lien shall be had, the City Clerk shall make an affidavit setting out the facts as to unknown address or whereabouts or nonresidence, and thereupon service of the publication as now provided for by law against nonresident defendants may be had, and an attorney ad litem may be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.

(Code 1965, §§11-3, 11-3.1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Ord. No. 2557, 9-4-79; Ord. No. 2922, 5-17-83; Code 1991, §95.03)

State law reference(s)--Enforcement of lien for clearance

FAYETTEVILLE CODE OF ORDINANCES
TITLE IX GENERAL REGULATIONS

Proposed amendments are in bold type.

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(B) It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.

(C) The mayor is authorized to establish comprehensive procedures to administer this section and to determine when corrective actions by a landowner are necessary. The mayor may consider how the land is being used: agricultural, parkland, woodlands, residential, commercial, institutional or industrial; and whether the owners desires to maintain and manage a naturalistic and sustainable landscape, when determining whether a landowner must take corrective action.

(Code 1965, •11-1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Code 1991, §95.01; Ord. 4510, 08-19-03)

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§ 14-54-804. Repealed by Acts of 1995, Act 555, § 1

SUBCHAPTER 9—REGULATION OF UNSANITARY CONDITIONS

§ 14-54-901. Authorization

Incorporated towns and cities of the first and second class are empowered to order the owner of lots and other real property within their towns or cities to cut weeds; to remove garbage, rubbish, and other unsightly and unsanitary articles and things upon the property; and to eliminate, fill up, or remove stagnant pools of water or any other unsanitary thing, place, or condition which might become a breeding place for mosquitoes, flies, and germs harmful to the health of the community, after the town or city has provided therefor by an ordinance to that effect.

Acts of 1943, Act 100, § 1.

Formerly A.S.A. 1947, § 19-2325.

Library References

Municipal Corporations ⇐607.
Westlaw Key Number Search: 268k607.

Research References

Treatises and Practice Aids
245 BNA Daily Report for Executives K-16, 2000.
245 BNA Daily Tax Report K-16, 2000.

§ 14-54-902. Notice

(a) In case the owner of any lot or other real property is unknown or his whereabouts is not known or he is a nonresident of this state, then a copy of the written notice referred to in § 14-54-903 shall be posted upon the premises. Before any action to enforce the lien shall be had, the recorder of the town or the city clerk shall make an affidavit setting out the facts as to unknown address or whereabouts of nonresidents.

(b) Thereupon, service of the publication, as provided for by law against nonresident defendants, may be had. An attorney ad litem shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if it can be found.

(c) Except as provided in subsection (b) of this section, notices required by this subchapter shall be published, mailed, or delivered by the municipal recorder or clerk or such other person as designated by the governing body of the municipality.

Acts of 1943, Act 100, § 3; Acts of 1989, Act 239, § 2.

Formerly A.S.A. 1947, § 19-2327.

Library References

Municipal Corporations ⇐607.
Westlaw Key Number Search: 268k607.

Agenda Session 6/30/09

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
July 7, 2009

A meeting of the Fayetteville City Council will be held on July 7, 2009 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Agenda Session Presentations:

1. Courts Building Progress Update – Lynn Hyke
2. Fayetteville Nutrient Reduction Plan and First Year – Chris Brown
3. American Recovery and Reinvestment Act Grant – John Coleman

Mayor's Announcements, Proclamations and Recognitions

Presentations, Reports and Discussion Items:

A. Consent:

1. Approval of the June 9, 2009 Special City Council meeting minutes and the June 16, 2009 City Council meeting minutes.
2. **U.S. Marshal's Service:** A resolution to approve a budget adjustment to recognize $25,000.00 in revenue from the U.S. Marshal's Service for police overtime costs.

3. **State and Tribal Assistance Grant (STAG):** A resolution authorizing the Mayor to apply for a State and Tribal Assistance Grant (STAG) in the amount of $286,400.00 from the U. S. Environmental Protection Agency for sanitary sewer system improvements; and designating the Mayor as the City of Fayetteville's authorized representative in all matters relating to the procurement and administration of said grant.

4. **Drake Field Insurance Reimbursement:** A resolution approving a budget adjustment recognizing the receipt of insurance reimbursement and establishing a project budget to track expenses related to the demolition, cleanup and contingency replacement of the hangar building at Drake Field that was destroyed by fire.

5. **Ice Storm 2009 Disaster:** A resolution approving budget adjustments totaling $377,291.00 to restore various operating budgets to funds and departments for cash expenses incurred in response to Ice Storm 2009 Disaster.

6. **Garver Engineers, LLC Amendment No. 4:** A resolution approving Amendment No. 4 to the contract with Garver Engineers, LLC to reduce the fee for construction phase services by $109,964.00 for Mount Comfort Road Improvements Contract 2, from Alpine Avenue to Rupple Road.

7. **Arkansas Natural Resources Commission Grant:** A resolution authorizing the Engineering Division to apply for a grant through the Arkansas Natural Resources Commission for the design and implementation of a stream bank restoration Project along a section of the White River adjacent to the Fayetteville Executive Airport.

8. **Bid # 09-07 Score American Soccer Company, Inc.:** A resolution awarding Bid # 09-07 and approving the purchase of youth soccer uniforms from Score American Soccer Company, Inc. in the amount of $27,097.00 for the Fall 2009 and Spring 2010 Season.

NB#1

9. **Light Rail Transit System:** A resolution to support an alternatives analysis study to determine the feasibility of a light rail transit system in Northwest Arkansas.

10. **Wedington Drive Right-of-Way:** A resolution authorizing the donation of right-of-way along Wedington Drive containing .09 acres and being a part of parcel No. 765-13741-007, and authorizing the Mayor to execute deeds and all other necessary papers to transfer ownership of the property to the Arkansas State Highway Commission.

B. Unfinished Business:

1. **RZN 09-3271 (Sale Barn/Campus Crest LLC, 562):** An ordinance rezoning that property described in rezoning petition RZN 09-3271, for approximately 8.87 acres, located at the old Washington County Sale Barn, north and east of 11th Avenue and Government Avenue from I-1, Heavy Commercial/Light Industrial, to DG, Downtown General.

This ordinance was left on the First Reading at the June 16, 2009 City Council meeting.

2. **Box Avenue Appeal:** An ordinance rezoning that property described in rezoning petition RZN 09-3280, for approximately 1.20 acres, located at the northwest corner of Mission Boulevard and Box Avenue from R-O, Residential Office, to C-1, Neighborhood Commercial.

This ordinance was left on the First Reading at the June 16, 2009 City Council meeting.

C. New Business:

1. **ADM 09-3307 (Sustainable Yards):** An ordinance to amend §95.01 Unsightly or Unsanitary Conditions on Real Property; Order and Notice To Correct of the Fayetteville Code to encourage properly maintained and managed naturalistic landscapes.

Agenda Additions:

Announcements:

1. **City Council Tour: July 6, 2009** W

Adjournment:

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Add: NB#3 National Cemetery Neighborhood Area Study
NB# 4 Amend Section 111.30 Retail

Pre-Agenda Meeting 6/24/09

Mayor Lioneld Jordan

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Fayetteville
ARKANSAS

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okay Don't check (7)

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2. **Amend Chapter 33:** An ordinance to amend Article XI Environmental Concerns Committee of Title III of the Code of Fayetteville to rename it Environmental Action Committee. 7-21-09 CC mtg.

Agenda Additions:

Announcements:

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FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council
Don Marr, Chief of Staff

FROM: **Kit Williams**, City Attorney

DATE: **July 6, 2009**

RE: **Municipal permits to sell alcoholic beverages on Sundays**

With the many changes to the Arkansas Code relating to Alcoholic Beverages passed by the 2009 Legislature, I have been reviewing the law in relation to our Fayetteville Code. I have proposed changes allowing Sunday sales for establishments selling beer and wine which are not liquor-by-the-drink restaurants (which already allow Sunday sales). Although there are now no state law prohibitions against Sunday sales for these bars, I believe the City would still be empowered to prohibit Sunday sales pursuant to A.C.A. §3-5-213:

> "Cities and towns may impose additional restrictions … providing hours of opening and closing and such other rules and regulations as will promote public health, morals, and safety which they may by ordinance provide."

When the City regulated the closing hours for private clubs, we were challenged by a private club owner, but we prevailed in Circuit Court and also on appeal to the Arkansas Supreme Court. The Arkansas Supreme Court rejected an argument that sate law had preempted such regulation or that the City ordinance was in conflict with state law. Tompos v. City of Fayetteville, 280 Ark. 435, 658 S.W.2d 404 (1983).

Although the new state law says a bar owner "may operate on Sundays between the hours of 10:00 a.m. and 12:00 midnight" (Act 294), I believe the still effective A.C.A. §3-5-213 would authorize "additional restrictions … providing hours of opening and closing" to be set by the City Council.

CONCLUSION

The City Council can allow Sunday sales for establishments selling beer and wine which previously were prohibited from Sunday sales by state law. **The City Council is not bound by the state statutorily allowed hours 10:00 a.m. until midnight on Sundays and may prescribe a shorter period.**